ATTACHMENT #26

FMCSA (Docket #10866) and NHTSA (Docket #22197) NOTICE of NPRM WITHDRAWAL

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FOR IMMEDIATE RELEASE
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Implementing NAFTA

DOT Sets Safety Requirements For Mexican Trucks, Buses in United States

The United States today took another step toward safe implementation of the southern border truck and bus crossing provisions of the North American Free Trade Agreement (NAFTA). The U.S. Department of Transportation established tough safety requirements for Mexican motor carriers operating to and from the United States and required that all motor carrier safety inspectors, auditors, and investigators be certified.

"President Bush and I are committed to extending the benefits of free trade throughout North America while ensuring that a strict and rigorous safety regime is established and enforced," U.S. Transportation Secretary Norman Y. Mineta said. "The steps taken today will help ensure that all trucks, buses and drivers entering the United States from Mexico meet U.S. safety standards and operate safely on U.S. roads when we implement the truck and bus provisions of NAFTA."

With today's regulatory action, Mexican carriers applying to operate anywhere in the United States will be required to have a distinctive USDOT number, have their vehicles pass a safety inspection, and undergo intensified safety monitoring during an 18-month provisional period, and provide supplemental safety certifications as part of the application process. Mexican commercial vehicles will be

permitted to enter the United States only at commercial border crossings and only when a certified motor carrier safety inspector is on duty.

The regulations also will require Mexican carriers operating in the United States to have a drug and alcohol-testing program, a system of compliance with U.S. federal hours-of-service requirements, adequate data and safety management systems, and valid insurance with a U.S. registered insurance company. The carrier's ability to meet these requirements will be verified by a safety audit conducted by qualified U.S. inspectors prior to receiving provisional authority to operate to and from the U.S.

At least half of these safety audits, which are to be conducted by qualified inspectors, must take place in Mexico. In addition to safety audits, all Mexican carriers granted provisional operating authority will undergo full safety compliance reviews during the 18-month provisional period.

FMCSA intends to provide Mexican carriers educational and technical assistance before the border opens and as they apply for operating authority.

The rules announced today include requirements that meet terms in the Transportation and Related Agencies Appropriations Act, 2002, signed into law by President Bush on Dec. 18, 2001. They comprise a final rule, three interim final rules and a proposed rule by the Department's Federal Motor Carrier Safety Administration (FMCSA). FMCSA plans to publish similar rules later this year for all new entrant carriers who seek motor carrier authority to operate in the United States.

In companion documents, the Department's National Highway Traffic Safety Administration proposed rules and procedures that manufacturers would be required to follow to retrofit vehicles with certification labels, complementing FMCSA's proposal that all trucks and buses operating in the United States carry labels certifying that they meet U.S. federal motor vehicle safety standards at the time of manufacture.

Today's rulemakings are among the actions that the U.S. Department of Transportation is taking to prepare for opening the border for Mexican truck and bus operations, which is expected by mid-year.

Additional information about the five FMCSA regulatory actions posted at the Federal Register can be accessed at: www.fmcsa.dot.gov/ . NHTSA's proposals are on the Internet at http://www.nhtsa.dot.gov/ and a fact sheet is at www.dot.gov/affairs/briefing.htm .

The regulatory documents are in the USDOT docket (Docket Numbers FMCSA-98-3297, FMCSA-98-3298, FMCSA-98-3299, FMCSA-2001-11060, FMCSA-01-10886, NHTSA-02-11592, NHTSA-02-11593, and NHTSA-02-11594). To be considered, written comments on the interim rulemakings and proposals should be sent to the USDOT docket facility before the date indicated in each document. Comments should be sent to the attention of the specific document number, Room PL?401, 400 Seventh Street, S.W., Washington, DC. The rules and comments filed in each rulemaking are on the Internet and can be viewed there by searching for the docket number at http://dms.dot.gov/ . Comments also may be submitted electronically at this site.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–01–10886]

RIN 2126—AA69

Parts and Accessories Necessary for Safe Operation; Certification of Compliance With Federal Motor Vehicle Safety Standards; Withdrawal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) withdraws its March 19, 2002, notice of proposed rulemaking (NPRM), which proposed requiring each commercial motor vehicle (CMV) operating in interstate commerce to display a label applied by the vehicle manufacturer or a registered importer to document the vehicle's compliance with all applicable Federal Motor Vehicle Safety Standards (FMVSSs) in effect as of the date of manufacture. We issued the NPRM in coordination with the National Highway Traffic Safety Administration (NHTSA), which published on the same day three companion notices related to the FMVSS certification requirement. Although the NPRM would have applied to all CMVs operated in the United States, its greatest impact would have been on motor carriers domiciled in Canada and Mexico. In withdrawing the NPRM, we conclude the proposed FMVSS certification label requirement is not necessary to ensure the safe operation of CMVs on our nation's highways. Vehicles operated by Canada-domiciled motor carriers meet Canadian Motor Vehicle Safety Standards (CMVSSs), which are consistent with the FMVSSs in all significant respects. Furthermore, since the FMVSSs critical to the operational safety of CMVs are cross-referenced in the Federal Motor Carrier Safety Regulations (FMCSRs), FMCSA, in consultation with NHTSA, has determined it can most effectively achieve the compliance of CMVs with the FMVSS through enforcement measures and existing regulations ensuring compliance with the FMCSRs, making additional FMVSS certification-labeling regulation unnecessary.

DATES: The notice of proposed rulemaking published on March 19, 2002, at 67 FR 12782, is withdrawn as of August 26, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On March 19, 2002, FMCSA and NHTSA published four notices requesting public comments on regulations and policies directed at enforcement of the statutory prohibition on the importation of commercial motor vehicles that do not comply with the applicable FMVSSs. The notices were issued as follows: (1) FMCSA's notice of proposed rulemaking (NPRM) proposing to require motor carriers to ensure their vehicles display an FMVSS certification label (67 FR 12782); (2) NHTSA's proposed rule to issue a regulation incorporating a 1975 interpretation of the term "import" (67 FR 12806); (3) NHTSA's draft policy statement providing that a vehicle manufacturer may, if it has sufficient basis for doing so, retroactively certify a motor vehicle complied with all applicable FMVSSs in effect at the time of manufacture and affix a label attesting this (67 FR 12790); and (4) NHTSA's proposed rule concerning recordkeeping requirements for manufacturers that retroactively certify their vehicles (67 FR 12800).

In addition to the proposal concerning FMVSS certification, FMCSA published on that same day (March 19, 2002) three interim rules and a final rule related to implementation of the North American Free Trade Agreement (NAFTA). The interim final rules were "Application by Certain Mexico-Domiciled Motor Carriers To Operate Beyond United States Municipalities and Commercial Zones on the United States-Mexico Border" (67 FR 12702), "Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States" (67 FR12758), and "Certification of Safety Auditors, Safety Investigators, and Safety Inspectors" (67 FR 12776). The final rule was "Revision of Regulations and Application Form for Mexico-Domiciled Motor Carriers To Operate in United States Municipalities and Commercial Zones on the United States-Mexico Border" (67 FR 12652).

NHTSA and FMCSA have complementary responsibilities to ensure vehicle safety under their respective enabling legislation. NHTSA establishes manufacturing standards—the FMVSS—under authority of the National Traffic and Motor Vehicle Safety Act of 1966 (Pub. L. 89–563) (Vehicle Safety Act). Part 567 of title 49, Code of Federal Regulations (49 CFR Part 567), requires manufacturers or registered importers of motor vehicles built for sale or use in the United States to affix a label certifying the motor vehicle meets the applicable FMVSSs in effect on the date of manufacture.

Under 49 U.S.C. 31136(a), the Secretary of Transportation (Secretary) has authority (delegated to FMCSA by 49 CFR 1.73) to prescribe minimum safety standards for commercial motor vehicles to ensure these vehicles are maintained, equipped, loaded, and operated safely. FMCSA also has been delegated authority to prescribe requirements for the safety of operation and equipment of motor carriers operating in interstate commerce. See 49 U.S.C. 31502(b). The agency's regulatory authority encompasses the safe operation of CMVs in interstate and foreign commerce, motor carriers conducting these operations, and CMV drivers. FMCSA's safety regulations, the Federal Motor Carrier Safety Regulations (FMCSRs), are codified in 49 CFR parts 325–399.

FMCSA's withdrawal of this NPRM is consistent with NHTSA's Notice of Withdrawal of Proposed Policy Statement published elsewhere in today's **Federal Register**. NHTSA has decided to withdraw a 1975 interpretation in which the agency had indicated that the Vehicle Safety Act is applicable to foreign-based motor carriers operating in the United States. Although FMCSA is withdrawing its NPRM, we will uphold the operational safety of commercial motor vehicles on the nation's highways—including that of Mexico-domiciled CMVs operating beyond the U.S.-Mexico border commercial zones—through continued vigorous enforcement of the FMCSRs, many of which cross-reference specific FMVSSs. Mexico-domiciled motor carriers are required under 49 CFR 365.503(b)(2) and 368.3(b)(2) to certify on the application form for operating authority that all CMVs they intend to operate in the United States were built in compliance with the FMVSSs in effect at the time of manufacture. Further, 49 CFR 365.507(c) requires Mexico-domiciled motor carriers to pass an FMCSA pre-authority safety audit before they are granted provisional authority to operate in the United States beyond the border commercial zones. This inspection will include checking compliance with part 393 of the FMCSRs and the FMVSSs they cross-reference. These vehicles also will be subject to inspection by enforcement

personnel at U.S.-Mexico border ports of entry and at roadside in the United States to ensure their compliance with applicable FMCSRs, including those that cross-reference the FMVSSs. For vehicles lacking a certification label, it has been determined that enforcement officials could, as necessary, refer to the VIN (vehicle identification number) in various locations on the vehicle. The VIN will assist inspectors in identifying the vehicle model year and country of manufacture to determine compliance with the FMVSS or CMVSS.

As described in an FMCSA policy memorandum, "Enforcement of Mexico-Domiciled Motor Carriers' Self-Certification of Compliance with Motor Vehicle Safety Standards," if FMCSA finds, during the pre-authority audit or subsequent inspections, that a Mexico-domiciled carrier has falsely certified its vehicles as FMVSS compliant, we may use this information to deny, suspend, or revoke the carrier's operating authority or certification of registration or issue appropriate penalties for the falsification. We are issuing this policy memorandum to FMCSA field offices and our State enforcement partners under the Motor Carrier Safety Assistance Program (MCSAP). A copy of the memorandum is available in the docket.

Discussion of Comments to the NPRM

The following organizations commented on the agency's NPRM to require that motor carriers ensure their vehicles display an FMVSS certification label: Advocates for Highway and Auto Safety (Advocates); the Amalgamated Transit Union (ATU); the American Insurance Association (AIA); the American Trucking Associations (ATA); the Embassy of Canada (Canada); the Canadian Transportation Equipment Association (CTEA); the Canadian Trucking Alliance (CTA); the Canadian Vehicle Manufacturers Association (CVMA); the Commercial Vehicle Safety Alliance (CVSA); the California Highway Patrol (CHP); Greyhound Lines, Inc. (Greyhound); the International Brotherhood of Teamsters (IBT); Manitoba Transportation and Government Services (Manitoba); the Missouri State Highway Patrol, Commercial Vehicle Enforcement Division (Missouri CVED); the National Truck Equipment Association (NTEA); Public Citizen; the Transportation Trades Department, AFL-CIO (TTD); and the Truck Manufacturers Association (TMA).

Many commenters submitted identical comments to the dockets for the FMCSA and NHTSA proposals published on March 19, 2002, as well as to the four other NAFTA-related rules FMCSA published that day. The comments summarized below are discussed in the context of FMCSA's NPRM regarding the FMVSS certification label.

General Comments

Most of the commenters expressed concern that the proposal would require a complex and difficult-to-implement process involving replacement of compliance labels and re-creation of manufacturers' performance test documentation for vehicles long in use. Many commenters noted this would not address the fundamentals of what is necessary to ensure CMVs operate safely. They questioned the safety benefits of requiring a certification label, given that all CMVs operated in the United States are required both to comply with the FMCSRs and to pass roadside inspections conducted by safety officials according to standard Federal inspection procedures.

CVSA stated the consensus among its member jurisdictions was "that implementation of the NPRM would not resolve any safety issues, but instead would create a significant economic effect on cross-border trade, and domestic commercial transportation."

TMA supported the agency's efforts to ensure commercial motor vehicles manufactured in Canada and Mexico meet the same safety standards required of CMVs manufactured for the U.S. market. However, TMA believed both the FMCSA proposal and NHTSA's proposed policy statement on retroactive certification invited compliance problems and could impact U.S. motor carriers adversely. CVMA supported TMA's position, adding it believes better opportunities exist for improving CMV safety through vehicle maintenance and enforcement of safety regulations. It cited programs adopted by the Province of Ontario as examples.

CTEA, a trade association representing vehicle and equipment manufacturers and the provider of a label service to Canadian and U.S. commercial motor vehicle manufacturers registered with Transport Canada and NHTSA, was encouraged that FMCSA addressed the issue of certification compliance labels. CTEA believes, however, the most effective way to improve CMV roadworthiness is for operators to adhere to manufacturers' maintenance schedules and practices, and for recommended inspection procedures to be used.

NTEA, a U.S. trade association representing distributors of multistage-produced, work-related trucks, truck bodies, and equipment, expressed a number of concerns about the practicality of implementing the proposed requirements. NTEA's concerns are discussed in detail under *Reciprocity with Canadian Standards* and the two sections on *Replacement Labels* below.

ATA stated it supports truck safety achieved through "reasonable and cost-effective measures," applied appropriately according to operations conducted and equipment used. ATA believes achieving safe operations does not depend on the presence of a certification label. It asserted FMCSA has provided no data indicating vehicles without certification labels operate unsafely, adding it is unaware of the existence of such data. CVSA, CTA, Missouri CVED, and Manitoba made similar comments.

Canada asserted "there is no credible case that extending [the FMVSS labeling requirements] to Canadian commercial vehicles would result in increased safety." Canada referred to studies showing Canadian CMVs operating in the United States to be as safe as, or safer than, U.S.-based CMVs, and claimed it would be difficult, costly, and in some cases impossible to comply with the proposed regulation. Canada also anticipated the proposal would have a serious negative impact on cross-border trade and tourism, as well as violate United States obligations under both NAFTA and the Marrakesh Agreement Establishing the World Trade Organization. Canada contended the rule would provide less favorable treatment to Canadian motor carriers than to U.S. carriers, and would restrict trade more than is necessary to achieve safety objectives.

CTA stated the safety of Canadian motor carriers operating in the United States would not be diminished absent the provisions of the NPRM. CTA estimates there are at least 250,000 CMVs regularly engaged in cross-border traffic, but believes the number could be much higher: "Since carriers do not segregate their fleets into 'domestic' and 'international' equipment, from a practical standpoint, all equipment in fleets with cross-border operations would fall under the proposed labeling requirements."

Seven commenters favored the proposal:

Greyhound contended Mexico-manufactured buses "did not comply with the FMVSS when they were manufactured and do not comply with the FMVSS and the Federal Motor Carrier Safety Regulations (FMCSR) now," and asserted it would be highly inappropriate for DOT to allow these vehicles to operate in the United States.

ATU stated it concurs with Greyhound's comments.

Advocates, acknowledging NAFTA requires elimination of trade barriers and unnecessary burdens on commerce, stressed that the treaty "was not intended to require the evasion or suspension of established motor vehicle regulations and safety standards." AIA supported Advocates' position.

Citing the requirements of the Vehicle Safety Act and a 1975 interpretation letter issued by NHTSA, CHP supported the proposal for the certification and labeling requirements.

Public Citizen stated the proposed NHTSA and FMCSA regulations "close an unofficial loophole" in the agencies' regulations. IBT also supported the FMCSA proposal.

FMCSA Response: Generally, U.S. motor carriers operating CMVs (as defined in 49 CFR 390.5) in interstate commerce have access only to vehicles that either were manufactured domestically for use in the United States and have the required certification label or were imported into the United States in accordance with applicable NHTSA regulations, including certification documentation requirements of 49 CFR Part 567. Furthermore, FMCSA's safety regulations incorporate and cross-reference the FMVSSs critical to continued safe operation of CMVs. Finally, with only a few minor differences, the Canadian Motor Vehicle Safety Standards (CMVSSs) mirror the FMCSRs.

Although Mexico-domiciled vehicles are less likely to display FMVSS or CMVSS certification labels, FMCSA believes continued strong enforcement of the FMCSRs in real-world operational settings, coupled with existing regulations and enhanced enforcement measures, will ensure the safe operation of Mexico-domiciled CMVs in interstate commerce. Under the MCSAP, FMCSA and its State and local partners conduct approximately 3 million roadside vehicle and driver inspections each year on vehicles (domiciled in the United States, Canada, or Mexico) operating in interstate commerce. Enforcement of the FMCSRs, and by extension the FMVSSs they cross-reference, is the bedrock of these compliance assurance activities. Therefore, after careful consideration, FMCSA has concluded it is not necessary to amend the FMCSRs to require commercial motor vehicles to display an FMVSS certification label in order to achieve effective compliance with the FMVSSs.

Simply requiring CMVs to bear FMVSS certification labels would not ensure their operational safety. An FMVSS label certifying compliance with performance standards applicable to lights, brakes, and other wear items does not ensure real-world safety in the absence of compliance with the operational and maintenance standards imposed by the FMCSRs, especially in the case of vehicles built many years ago. Although the presence or absence of an FMVSS compliance label can certainly provide a useful tool in this regard, inspection of the CMV's compliance with the FMCSRs remains the benchmark by which enforcement officials identify and remove from service vehicles likely to break down or cause a crash. The American public is better protected by the FMCSRs than solely through a label indicating a CMV was originally built to certain manufacturing performance standards.

Congress intended the FMVSSs and FMCSRs as mutually supportive systems of regulations—one manufacturing, the other operational. In the Vehicle Safety Act, which mandated creation of the manufacturing standards, Congress specified that the preexisting motor carrier safety regulations promulgated by the Interstate Commerce Commission should not differ in substance or impose any lesser standard of performance than the manufacturing standards. (See also Senate Commerce Committee Report No. 1301, June 23, 1966.) After the establishment of DOT on April 1, 1967, the FMVSSs and motor carrier safety regulations (now FMCSRs) were in fact coordinated under a single agency, the Federal Highway Administration, wherein they were redesignated in December 1968 under newly established chapter III of title 49 of the Code of Federal Regulations (33 FR 19700, Dec. 25, 1968).

Since that time, care has been taken in rulemaking proceedings amending the FMVSSs or FMCSRs to effectuate the Congressional intent of consistent and mutually supportive regulations. For example, FHWA and the National Highway Safety Bureau (NHSB) (which became part of NHTSA when that agency was established in 1971) coordinated same-day publication of complementary regulatory proposals on August 15, 1970—with NHSB proposing an FMVSS on bus push-out windows to provide a complementary manufacturing standard to an existing motor carrier safety regulation, while the FHWA proposed to amend its existing regulations concerning window construction in order to be consistent with the NHSB proposal. (The FHWA and NHSB proposals were published at 35 FR 13024 and 13025, respectively, and FHWA's final rule [37 FR 11677, June 10, 1972] made the agency's bus window requirements consistent with the new FMVSS standard [No. 217, published at 37 FR 9395 on May 10, 1972]). The most recent example is FMCSA's final rule, "Parts and Accessories Necessary for Safe Operation; General Amendments" (Docket Number FMCSA–1997–2364), which updates and expands FMCSR cross-references to FMVSSs and includes applicable engineering citations. As a result of the Congressional directive that the FMCSRs provide for performance no less than the FMVSSs and the history of consistency between the two bodies of regulations, enforcement of the FMCSRs assures compliance with the FMVSSs cross-referenced therein—and, more important, provides for safety on the highways.

Reciprocity With Canadian Standards

TMA recommended either a U.S. or Canadian certification label be accepted for commercial motor vehicles manufactured before the effective date of the NHTSA policy statement on retroactive certification. The only major differences between the U.S. and Canadian manufacturing standards are the effective dates (also called compliance dates) for the requirements for antilock brake systems (ABS) and automatic brake adjusters. Since all vehicles operating in the United States must comply with the FMCSRs, and the FMCSRs for automatic brake adjusters (§ 393.53) and ABS (§ 393.55) require CMVs to comply with FMVSS No. 105 (for hydraulic-braked vehicles) and FMVSS No. 121 (for air-braked vehicles) applicable at the time the vehicle was manufactured, the different compliance dates for U.S. and Canadian standards are moot. ATA, CTA, and NTEA also stressed the strong similarities between the U.S. and Canadian standards.

CVMA asserted the potential safety benefits of retroactive certification of CMVs built to comply with Canadian standards would be minimal and, under the proposal, retroactive certification would also include modifications made to vehicles after manufacture. It noted this would require not only consideration of the records of original and secondary manufacturers but also evaluation of repairs and modifications made by vehicle owners.

CVSA and CTA strongly encouraged DOT to consider developing a reciprocity agreement with Canada because the CMVSSs are so similar to the FMVSSs. Manitoba noted that some Canadian standards are "more stringent than the U.S. standards," citing requirements for daytime running lights and underride protection.

CTEA stated "* * * Canadian manufacturers registered with Transport Canada are entitled to affix a National Safety Mark (NSM) to their production. These same companies are registered with NHTSA for the purpose of exporting to the U.S. and they have met the label requirements for the U.S." TMA, CTEA, NTEA, and CTA expressed similar views.

CVSA, CTEA, and Manitoba believed Canadian authorities might require U.S.-manufactured vehicles entering Canada to display a CMVSS certification label, leading to disruptions in cross-border commerce.

Canada cited a 30-year history of "close and effective collaboration" with the United States to develop and implement CMV manufacturing and operating standards. It provided extensive analysis comparing the safety records of U.S. and Canadian motor carriers, citing results of FMCSA and DOT studies.

FMCSA Response: FMCSA, in consultation with NHTSA, agrees U.S. and Canadian CMV manufacturing standards are comparable in all significant respects. As TMA noted, the differences in effective dates for the Canadian and U.S. requirements for ABS and automatic brake adjusters are moot, because the effective dates of the *FMVSS* requirements, as incorporated in part 393 of the FMCSRs, determine whether a CMV is compliant with these standards. For example, a Canada-domiciled vehicle bearing a CMVSS label and manufactured on or after the effective date of NHTSA's ABS requirement (and before the effective date of Canada's ABS requirement) would be in violation of the FMCSRs when operating in the United States unless it were equipped with ABS. This distinction would have held even if the vehicle met the certification labeling requirement proposed in the NPRM. The same principle applies to U.S.-required conspicuity treatments, brake adjusters, brake adjustment indicators, and rear impact guards. The effective dates for FMVSSs incorporated in the FMCSRs apply equally to CMVs domiciled in the United States, Canada, and Mexico.

Moreover, an FMVSS or CMVSS certification label denotes only the vehicle's compliance with the U.S. or Canadian manufacturing standards applicable to newly *manufactured vehicles.* The certification label, while a useful guidepost, is not the most important basis for determining whether a vehicle is in current safe operating condition. CMV operational safety compliance is best addressed in terms of these vehicles' compliance with the FMCSRs.

In response to Manitoba's comment regarding rear underride protection and daytime running lamps, FMCSA's rules concerning rear impact guards were revised on September 1, 1999, to require motor carriers to ensure their trailers manufactured on or after January 26, 1998, are equipped with rear impact guards meeting the requirements of FMVSS Nos. 223 and 224 (49 CFR 571.223 and 571.224). FMVSS No. 108 (49 CFR 571.108) concerning lamps and reflective devices was amended on January 11, 1993, to ensure daytime running lights installed voluntarily on newly manufactured vehicles meet certain performance requirements. Section 393.11 of the FMCSRs cross-references FMVSS No. 108 and requires motor carriers to ensure their CMVs are maintained to comply with this requirement.

Canada's requirements for conspicuity treatment of trailers and semitrailers provide several options for the colors and placement of retroreflective material; one of these options meets the requirements of FMVSS No. 108. FMCSA has advised Canadian manufacturers, industry groups, and motor carriers that 49 CFR 393.11 requires all Canada-based trailers operated in the United States to comply with the FMVSS No. 108 requirements for conspicuity treatments on trailers manufactured on or after December 1, 1993. Section 393.11 cross-references FMVSS No. 108 and requires motor carriers to ensure CMVs manufactured after March 7, 1989, meet all applicable requirements of FMVSS No. 108 in effect on the date of manufacture. In addition, § 393.13 provides flexibility for retrofitting conspicuity treatments for trailers and semitrailers manufactured before December 1, 1993, by allowing the use of other colors or color combinations along the sides or lower rear of semitrailers and trailers until June 1, 2009.

Safety of Vehicles Manufactured for the Mexican Market

Greyhound expressed concern about the enforceability of the NPRM provisions: "We state unequivocally that the vast majority of Mexican-manufactured buses did not comply with the FMVSS when they were manufactured and do not comply with the FMVSS and the Federal Motor Carrier Safety Regulations (FMCSR) now. Many of these buses do not comply with the FMVSS/FMCSR standards for fundamental safety items such as brakes, fuel systems, windows, and emergency exits." Greyhound believed the proposed requirement for the FMVSS certification label "should ultimately ensure compliance with the FMVSS," but recommended FMCSA take additional action in the near term. Specifically, FMCSA should automatically deny provisional operating authority to motor carriers discovered during onsite safety audits to be noncompliant with the FMCSRs.

ATA, while acknowledging Mexican federal safety standards are less similar to the U.S. requirements than are the Canadian standards and do not include a requirement for certification labels, nevertheless contended the Mexican standards help ensure new vehicles incorporate needed safety features. It asserted vehicle manufacturers the world over are interested in building equipment that will be safe "if driven correctly and maintained properly." ATA noted the requirements of the FMCSRs adequately address the safe operation of CMVs, whereas a label describes the vehicle's safety compliance only as of the date of manufacture.

CVSA stated "Mexican safety standards do not require certification labels and do not mirror those of the U.S. as closely as Canadian standards, but their efforts to match U.S. standards, and in some cases surpass them (as with more restrictive drug and alcohol testing) ensures that important safety standards are being met." CVSA maintained there is no evidence to suggest Mexico-based vehicles "provide less than desirable safety performance." In addition, CVSA stated the certification label "does not provide evidence that the vehicle is safe, and it is impractical to place a vehicle Out of Service just because it is lacking a certification label."

FMCSA Response: Regardless whether a CMV bears a certification label from a manufacturer or a registered importer, it must comply with all applicable FMCSRs, including those that cross-reference FMVSS requirements in effect on the date of manufacture. As noted earlier in this document, the certification label does not, in and of itself, fulfill motor carriers' obligations to comply with applicable FMCSRs—whereas compliance with FMCSRs does provide effective confirmation of compliance with the cross-referenced FMVSSs.

With regard to Greyhound's comments about denying provisional operating authority to Mexico-domiciled motor carriers whose CMVs are found during on-site audits to be noncompliant with the FMCSRs, Mexico-domiciled carriers are required under 49 CFR 365.503(b)(2) and

368.3(b)(2) to certify on the application form for operating authority that all CMVs they intend to operate in the United States were built in compliance with the FMVSSs in effect at the time of manufacture. If the motor carrier were unable to make the necessary certification on its application, the agency would deny its request to operate in the United States.

Moreover, as noted in the *Background* section of this document, 49 CFR 365.507(c) requires Mexico-domiciled motor carriers to pass an FMCSA pre-authority safety audit before they are granted provisional authority to operate in the United States beyond the border commercial zones. The pre-authority safety audit evaluation criteria are in Appendix A to Subpart E of 49 CFR Part 365. If a pre-authority safety audit discloses an applicant has falsely certified its vehicles as FMVSS compliant, FMCSA may use this information to deny the application for provisional authority. In addition, as prescribed in the FMCSA policy memorandum discussed previously, if a motor carrier is discovered to be operating noncompliant vehicles in the United States after receiving provisional operating authority, the agency could suspend or revoke that authority based on the carrier's false certification.

The major potential obstacle to FMVSS conformance for truck tractors manufactured for the Mexican market appears to be the requirement for installation of ABS, applicable to vehicles manufactured on or after March 1, 1997. Because Mexico's vehicle safety regulations have not to date required ABS, many Mexico-based vehicles manufactured on or after March 1, 1997, did not include this feature and therefore do not bear an FMVSS certification label. However, information provided by the Truck Manufacturers Association in a September 16, 2002, letter to NHTSA Administrator Jeffrey W. Runge, M.D., and former FMCSA Administrator Joseph M. Clapp (available in the docket) offers a more complete picture.

According to TMA, U.S. manufacturers have manufactured and sold nearly 60,000 Class 8 trucks and tractors for the Mexican market since 1993. Roughly 80 percent of those vehicles were built in compliance with the FMVSSs and were so certified. KenMex, a subsidiary of Paccar, Inc., manufactures Kenworth trucks for sale in Mexico. KenMex began applying FMVSS certification labels in 1993 to all vehicles built for the Mexican market that met U.S. safety standards. Approximately 95 percent of those vehicles were equipped with ABS. International Truck and Engine Corporation trucks sold in Mexico complied with the FMVSSs, except that ABS could be deleted at the customer's option. However, the majority of International's tractors built and sold in Mexico from July 1999 until September 2001 had ABS, as did some vehicles manufactured between 1996 and 1999. Freightliner sold a limited number of vehicles to customers in Mexico before 1997, and all vehicles in three model lines sold in Mexico were certified to meet the FMVSSs. Volvo began selling U.S-manufactured trucks in Mexico in 1998, virtually all of them FMVSS-certified and bearing the requisite certification labels. We have summarized this information in the table below.

MANUFACTURERS' HISTORY OF TRUCKS AND TRUCK TRACTORS MANUFACTURED AND/OR SOLD IN MEXICO

Manufacturer	Manufactured in Mexico	Sold in Mexico	Notes
Ford	Yes: medium-duty	No	
Freightliner LLC			Sold limited number of vehicles in Mexico before 1997.
	Century Class	Yes	All have full U.S. certification.
	Columbia	Yes	All have full U.S. certification.
	Argosy	Yes	All have full U.S. certification.
	FLD	Yes	50% have full U.S. certification. 50% have label issues (tire labels, labels in Spanish). Approximately 20% of FLD vehicles do not have ABS.
	Sterling	Yes	10% have full U.S. certification. 90% have label issues, but have ABS.
General Motors	No	Yes	Sells only incomplete vehicles in Mexican market.
International Truck & Engine	Yes	Yes	9200, 9400: ABS was a "delete" option 3/97–9/01. 11/96–11/99: 1996 9000s do not bear FMVSS labels, but vehicles with ABS could be certified. Escobedo plant: 7/99–9/01: ABS "delete" option for 9000s, but majority had ABS. Starting 9/01, ABS no longer a "delete" option. 4000, 7000 series: tractors with ABS would have label.
Isuzu Motors	No	No	
Mack Trucks	No	No	Was in market for 1 year, sold 13 tractors, 12 chassis. Of the 13 tractors, 2 labeled & 6 retrofittable.
PACCAR Inc.	Yes—KenMex	Yes	At least 95% of the 40,000 T600, T800, T2000 and W900 vehicles have ABS. 1993 onward: FMVSS-compliant vehicles bear labels.
Volvo Trucks NA	No	Yes	3776 VN tractors labeled, 45 not labeled (no ABS). 2 VHD tractors labeled. 479 miscellaneous incomplete vehicles with chassis cab labels.

Based on the information presented in the table, we believe most model year 1996 and later CMVs manufactured in Mexico may meet the FMVSSs. (Since NHTSA's ABS requirement applies only to vehicles built on or after March 1, 1997, Mexico-domiciled vehicles manufactured before that date are required to comply with the FMVSSs applicable when they were built, but not with the ABS requirement.) Mexico-based vehicles manufactured on or after March 1, 1997, and not equipped with ABS would, in theory, need to be retrofitted with ABS to achieve compliance with the FMCSRs.

From a practical standpoint, however, this is not a viable option. Information

presented in the preamble to the Federal Highway Administration's final rule on ABS (63 FR 24454, May 4, 1998) explains the difficulty NHTSA researchers experienced in retrofitting commercial motor vehicles with ABS for the purpose of conducting a NHTSA fleet study. In that study, a relatively high number of truck tractors—116 out of 200, or 58 percent—experienced installation/pre-production design-related problems. Although the researchers attributed this to the "newness" of the systems in North American applications, we believe the percentage of malfunctions would be much greater if motor carriers were required to attempt retrofitting innumerable configurations of air-braked vehicles.

The NHTSA fleet study was a "best-case scenario" for retrofitting ABS, in that the vehicle and brake manufacturers (as well as wheel and hub manufacturers) worked together to complete the ABS installations. Even with this collaborative effort of experienced engineers, numerous problems related to the retrofitting process surfaced during the study. FMCSA believes the NHTSA research is strongly indicative of the types of technical problems that could be expected if motor carriers were required to retrofit vehicles with ABS. As ABS retrofitting is not practicable, vehicles manufactured on or after March 1, 1997—the effective date of NHTSA's ABS requirement (FMVSS number 121)—will satisfy U.S. safety requirements only if originally equipped with ABS. For a Mexico-domiciled CMV manufactured after March 1, 1997, FMCSA and State enforcement officials will rely closely on inspection of the vehicle to determine its compliance with the ABS requirement at § 393.55.

Consumer Responsibility: Certification Label

ATA asserted the statutory language of Section 108 of the Vehicle Safety Act "precludes the need for the consumer to either apply or retain the certification label." ATA further contended Section 114 of the Vehicle Safety Act is a requirement placed upon vehicle manufacturers and distributors, and the label serves as a notification to the dealer (or to another distributor) that the manufacturer(s) of the vehicle met the FMVSSs as of a given date. ATA provided photographs of additional labels affixed by some manufacturers, reading "Warning: Data shown on vehicle identification plate is correct on date of manufacture. Alterations made may affect data shown."

CVSA also contended the proposals would expand what, in its view, has been the historical use of certification labels "to provide buyer protection at the point of sale—in an attempt to regulate vehicles in interstate commerce.

FMCSA Response: Motor carriers are responsible for ensuring vehicles introduced into their fleets are maintained to the safety standards of the FMCSRs, including those cross-referencing the FMVSSs. However, FMCSA acknowledges the significant operational concerns raised by commenters. Prohibiting the operation of CMVs that are compliant with the FMVSSs and the FMCSRs, yet lack a certification label, would place an economic burden on motor carriers and vehicle manufacturers without enhancing commercial motor vehicle safety.

When it is necessary to determine whether the vehicle was certified by the manufacturer as complying with the FMVSSs, or was capable of certification, alternative identification methods are available. For example, Federal and State enforcement officials conducting roadside inspections could rely on a VIN and registration in a U.S. or Canadian jurisdiction as evidence of FMVSS compliance. The requirements for the VIN are described in 49 CFR Part 565. Section 565.4(e) requires the VIN of each vehicle to appear clearly and indelibly either upon a part of the vehicle (other than the glazing) that is not designed to be removed except for repair, or upon a separate plate or label permanently affixed to such a part. The VIN must have 17 characters and be formatted so basic information about the vehicle (such as country of manufacture, model year, identity of the manufacturer) can be quickly determined. Canada's requirements concerning the VIN are similar.

In addition to being marked on each vehicle, the VIN commonly is used to identify a vehicle on registration documents. Most State laws require these documents to be carried in the vehicle at all times. These registration documents provide a secondary method for safety officials to verify a CMV's model year and VIN and, by extension, the FMVSSs applicable to the particular CMV.

Generally, CMVs may not be registered in the United States or Canada unless the vehicle was manufactured for sale or use in either of those countries. Both countries have laws and regulations concerning the importation of vehicles for sale or use that effectively preclude U.S.- and Canada-based motor carriers from purchasing or leasing vehicles for use in their respective countries unless the vehicles were originally manufactured for, or subsequently modified for, such use. Under 49 U.S.C. 30112 and 30115 and 49 CFR parts 567 and 571, a U.S. motor carrier cannot purchase or use an imported vehicle manufactured for use in a foreign country unless (1) the original manufacturer certified, at the time of manufacture, that the vehicle complied with the applicable FMVSSs, or (2) a registered importer certified the vehicle was modified to comply with applicable U.S. safety standards.

The situation for Mexico-based CMVs is somewhat different. The government of Mexico has not, to date, established a set of vehicle manufacturing standards comparable in scope to the FMVSSs or CMVSSs, nor does it have requirements for certification or compliance with such standards. Hence, there is less assurance that vehicles imported into Mexico, or manufactured for the domestic market in Mexico, meet safety requirements comparable to those of the United States or Canada.

Therefore, we must rely on a strong verification program to confirm certifications (on the application form for FMCSA operating authority) by Mexico-domiciled carriers that they will operate only FMVSS-compliant CMVs in the United States beyond the border commercial zones. As noted in the *Background* section of this document, under FMCSA's enforcement policy memorandum these vehicles will be subject to inspection by enforcement personnel during the pre-authority safety audit and while operating in interstate commerce to ensure their compliance with applicable FMCSRs, including those that cross-reference the FMVSSs. If FMCSA finds a Mexico-domiciled carrier has falsely certified its vehicles as compliant, we may use this information to deny, suspend, or revoke the carrier's operating authority or certification of registration or issue appropriate penalties for the falsification.

Replacement Labels: General

TMA, ATA, and CVSA believed, contrary to FMCSA's assertion, the proposal would affect U.S. carriers more than their foreign counterparts. According to these and other commenters, safety certification labels, particularly those on trailers and converter dollies, often do not remain affixed or legible for the life of the vehicle.

ATA, CTA, NTEA, CTEA, and Canada raised numerous questions concerning the implementation of a requirement to obtain replacement labels. Among their

concerns: Replacement doors and cabs do not bear certification labels, 49 CFR § 567.4(b) prohibits labels from being transferred, and labels are designed to be self-defacing if removal is attempted. ATA, CTA, and Canada noted it would be impossible to obtain replacement certification labels from bankrupt or defunct manufacturers. NTEA recommended allowing motor carriers to replace certification labels, while TMA suggested a single, NAFTA-wide safety certification label acceptable to all three NAFTA nations.

ATA estimated the loss of direct annual revenue just from trailers prohibited from operating without certification labels would exceed $200 million.

FMCSA Response: FMCSA acknowledges the commenters' concerns. The withdrawal of the NPRM renders this issue moot.

Replacement Labels: Special and Rebuilt Vehicles

ATA, CTA, NTEA, and CVSA questioned how FMCSA would address the labeling of CMVs manufactured in two or more stages, noting that 49 CFR Part 568 requires labeling for these vehicles. ATA asserted consumer-performed repairs, such as replacing original tires with low-profile tires, "invalidate portions of the certification label."

TMA, ATA, and NTEA contended the proposed rule could eliminate the use of glider kits and service cabs (repair parts sold by truck manufacturers to repair a relatively new vehicle that suffered extensive body damage but has a salvageable engine, transmission, drive axles, or other major components). They reasoned a glider kit manufacturer cannot provide a certification label for a repaired vehicle based on the construction of the original vehicle, since it has no knowledge of the extent or quality of the repair.

Missouri CVED questioned how FMCSA would treat the labeling of homemade trailers or other equipment made by persons who are not manufacturers or equipment fabricators, noting the State of Missouri requires these vehicles to have a VIN affixed by the manufacturer. If a vehicle does not have a VIN, the Missouri Department of Revenue issues it a "DRX" plate and number.

FMCSA Response: As stated previously, by virtue of withdrawing the NPRM, we are retracting the proposed requirement for certification labels.

In response to the concern regarding the use of glider kits and service cabs, this matter is addressed in 49 CFR 571.7(e), Combining new and used components. If a glider kit or a service cab were used to replace an original cab that had been damaged beyond repair, and the cab were fitted with at least two of the three components (engine, transmission, drive axles) from another vehicle, the resulting vehicle would not be considered newly manufactured and its VIN would be the same as that of the vehicle used to provide at least two of the three components.

In response to Missouri CVED's comment concerning homemade trailers, the FMVSSs apply to every newly manufactured motor vehicle without exception.

With regard to State-assigned VINs, such as the "DRX" plate mentioned by Missouri CVED, the Vehicle Equipment Safety Commission (VESC) issued Regulation VESC–18 in August 1979, "Standardized Replacement Vehicle Identification Number System." (The VESC no longer exists, but its materials are currently available through the American Association of Motor Vehicle Administrators of Arlington, Virginia.) Regulation VESC–18 serves as a model procedure for States to assure that all vehicles subject to title and/or registration are readily identifiable through verification of a manufacturer's VIN or State-issued VIN. A copy of Regulation VESC–18 is in the docket.

Roadside Inspections

CVSA requested FMCSA to report on the differences among U.S., Mexican, and Canadian vehicle equipment manufacturing standards for the benefit of manufacturers, registered importers, and roadside inspectors.

Advocates contended FMCSA would be unable to ensure motor carriers' compliance with the FMCSRs, and with those FMVSSs cross-referenced in the FMCSRs, in the absence of certification labels or documentation.

ATA questioned how enforcement officials at roadside could readily verify FMVSS compliance of a CMV manufactured in multiple stages. ATA also inquired how trailers entering the United States by rail or ship would be inspected, who would perform the inspections, and how nonconforming trailers would be handled.

Canada expressed concerns about potential enforcement activities by the U.S. Customs Service (now part of the Department of Homeland Security, under the Directorate of Border and Transportation Security) of vehicles-as-imports at the border, arguing these activities could paralyze cross-border operations and trade. Additionally, Canada feared the potentially chilling effect of heavy fines assessed for vehicles not properly labeled, pointing out this could prevent Canadian motor carriers from sending their CMVs into the United States.

FMCSA Response: NHTSA has evaluated the differences between the FMVSSs and CMVSSs applicable to heavy trucks and buses, and includes this analysis in its Notice of withdrawal of its policy statement on retroactive certification of CMVs by vehicle manufacturers, published elsewhere in today's **Federal Register**.

We recognize the concerns expressed by CVSA. However, Mexico has not established a comprehensive set of federal CMV manufacturing standards comparable to U.S. and Canadian standards, or based upon a statutory or regulatory scheme similar to those used in the United States and Canada. Therefore, any meaningful transnational comparison of manufacturing standards would be limited to the FMVSS and CMVSS. NHTSA and Transport Canada, as the regulatory agencies responsible for implementing and enforcing their respective nations' vehicle manufacturing safety laws, work together to research the causes and potential means of addressing deaths and injuries associated with motor vehicle crashes. As a result of the similar statutory schemes and the long-standing cooperative relationship between the two regulatory agencies, the FMVSS and CMVSS are similar in almost all substantive respects.

In response to ATA's comment concerning determination of FMVSS compliance of a vehicle manufactured in multiple stages, § 567.4 of NHTSA's regulations describes the manufacturer's responsibility for compliance labeling of the vehicle. Section 567.5 addresses the requirements for manufacturers of vehicles manufactured in two or more stages. These regulations were unaffected by NHTSA's and FMCSA's proposals.

In response to ATA's question on procedures for inspecting trailers entering the United States by rail (such as in trailer-on-flatcar service) or by ship (such as in intermodal containers), these trailers are subject to inspection by FMCSA or its State partners when operated on the highways. Trailers operating in the United States must meet applicable FMCSA regulations. Trailer inspections are performed by Federal and State enforcement officials using the North American Standard Inspection procedures required for all roadside CMV and driver inspections. Nonconforming trailers would be handled in the same way as other vehicle safety violations.

Canada's concerns about performance of inspections at border crossing areas

are moot, in light of withdrawal of the NPRM. Inspections at the U.S.-Canada border will be conducted, as at present, under the North American Standard Inspection procedure.

In response to Advocates' comment, all CMVs, as defined in 49 CFR 390.5 and operated in interstate commerce, are subject to the FMCSRs. The coding of the VIN, which must appear clearly and indelibly on all vehicles, includes a character indicating the model year. Table VI of 49 CFR Part 565 provides those codes for the years 1980 through 2013 (49 U.S.C. 30112 does not apply to vehicles over 25 years old). Given the full VIN code, the enforcement official can determine more precise manufacturing data, including the specific configurations of components and accessories used on a particular vehicle.

Phase-In Period

Greyhound strongly opposed the proposed 2-year phased-in compliance period for certain Mexico-domiciled carriers, contending bus manufacturers in Mexico were advised some years ago that vehicles operating in the United States must comply with the FMVSSs. ATU and TTD supported Greyhound's position. Advocates and Public Citizen also expressed strong opposition to the phased-in compliance period, believing it conflicted with the requirements of the Vehicle Safety Act. Public Citizen pointed to a list of FMVSSs with which CMVs must comply, including antilock brakes, rear impact guards, and brake slack adjusters. Advocates contended phased-in compliance "would create a two-tiered safety regime for motor carriers * * * [and] provides a strong incentive for foreign motor carriers to operate equipment for up to two years without conforming to the FMVSS."

AIA asserted the proposal for a phase-in period is not dictated or envisioned under international law. CHP also opposed the phased-in compliance period.

IBT asserted the border must remain closed until the FMCSA and NHTSA rulemakings are completed, and recommended the phase-in period for carriers already operating in the United States (U.S. and Canadian motor carriers as well as Mexican carriers currently operating beyond the border zones) be reduced to 12 months. IBT also recommended FMCSA clarify the rule text to prohibit carriers currently operating within the border commercial zones from taking advantage of the phase-in period if they applied to operate beyond the border zones.

FMCSA Response: Today's withdrawal of the NPRM renders moot the concept of a phase-in period.

Mexico-based motor carriers with current authority to operate in the United States have long been required [1] to comply with all applicable FMCSRs. Moreover, these vehicles are subject to, and many have undergone, roadside inspections while operating in the United States. The agency's NAFTA-related rules concerning applications for operating authority and safety monitoring require all Mexico-domiciled vehicles operating beyond the border commercial zones to display at all times a current and valid inspection decal for a period of 18 months after a carrier receives provisional operating authority and an additional 3 years after the carrier receives permanent authority. See 49 CFR 365.511 and 385.103. The inspection decal demonstrates the vehicle's compliance with FMVSSs cross-referenced in the FMCSRs, including all of the FMVSSs to which Public Citizen refers. Furthermore, the FMCSRs require motor carriers to maintain this safety equipment on their vehicles.

The roadside inspection procedure is the same for all CMVs operated in the United States, regardless of the motor carrier's country of domicile. In addition, as described above under *Safety of Vehicles Manufactured for the Mexican Market* (and in the FMCSA policy memorandum discussed there and in the *Background* section), if FMCSA or State inspectors determine that any Mexico-domiciled CMVs lack the proper certification, we may use this information to suspend or revoke the carrier's operating authority or certificate of registration for making a false certification or issue appropriate penalties for the falsification.

[1] Section 9102 of the Truck and Bus Safety and Regulatory Reform Act of 1988 (title IX, subtitle B of the Anti-Drug Abuse Act of 1988, Public Law 100–690, 102 Stat. 4181, 4528) required the Secretary to exempt certain foreign motor carriers from part 393 of the FMCSRs, for a period of one year beginning on November 18, 1988. The Federal Highway Administration (FHWA), then the DOT agency responsible for motor carrier safety, addressed the requirements of the Act by publishing a final rule and request for comments on March 24, 1989 (54 FR 12200). In a report to Congress required under this legislation, FHWA recommended the part 393 exemption created by the Act be allowed to lapse, with the exception of a requirement for front-wheel brakes, and that Mexico-domiciled motor carriers operating in the border commercial zones be given until January 1, 1991, to comply with that standard. FHWA published a final rule on May 17, 1994 (59 FR 25572) requiring Mexico-domiciled CMVs operated in the United States to be equipped with brakes acting on all wheels.

As also described above in our discussion of the safety of Mexico-domiciled vehicles, 49 CFR 365.507(c) requires Mexico-domiciled motor carriers to pass an FMCSA pre-authority safety audit before they are granted provisional authority to operate in the United States beyond the border commercial zones. The pre-authority audit will include inspection of available vehicles that have not received the necessary inspection decal. This inspection will include checking compliance with part 393 of the FMCSRs and the FMVSSs they cross-reference. For vehicles lacking a certification label, it has been determined that enforcement officials could, as necessary, refer to the VIN in various locations on the vehicle. The VIN will assist inspectors in identifying the vehicle model year and country of manufacture to determine compliance with the FMVSS or CMVSS. If FMCSA determines the carrier, after having certified all its vehicles as compliant, plans to operate vehicles not complying with those motor vehicle safety standards in effect on the date of manufacture, we may use this information to deny operating authority to the carrier.

Because Mexico-domiciled motor carriers seeking new operating authority are required to certify on the application form that they operate only vehicles manufactured or retrofitted to be in compliance with the FMVSSs, these carriers should refrain from submitting applications for operating authority until they are able to ensure all vehicles to be operated in the United States are in compliance with the FMVSSs in effect on or after their date of manufacture. This requirement will be vigorously enforced, consistent with the agency's policy memorandum discussed previously.

FMCSA's withdrawal of its NPRM concerning certification labels does not relieve motor carriers of the responsibility to comply with all applicable FMCSRs, including those that cross-reference the FMVSSs. The FMCSRs apply equally to all motor carriers operating CMVs in interstate commerce in the United States. Canada- and Mexico-domiciled motor carriers must comply with the same safety regulations as U.S. carriers.

Out-of-Service Violations

TMA questioned whether FMCSA would place a vehicle out of service solely because it lacks an FMVSS certification label, since FMCSA did not explicitly include such a statement in its NPRM. Manitoba likewise was concerned CMVs could be impounded,

seized, or placed out of service for the absence of a certification label.

Advocates expressed a different view, contending without a certification label, "there can be no presumption of affirmative compliance with the certification requirement * * * [This is] evidence that the vehicle was not properly certified and inspectors should place the vehicle out of service."

In supplementary comments, CVSA stated a label does not, by itself, provide evidence of the vehicle's safety. CVSA considered it impractical to place a vehicle out of service solely because it lacks a certification label.

FMCSA Response: Since we are withdrawing the proposed certification label requirement, this issue is now moot. However, we addressed this subject in the preamble to the NPRM (67 FR 12782, at 12784, footnote 4), stating failure to have a certification label would not result in a vehicle's being placed out of service in the absence of vehicle defects meeting existing out-of-service criteria. The preamble to the NHTSA proposed policy statement (67 FR 12790, at 12792) also addressed this issue.

Other Vehicle Laws and Regulations

Greyhound urged FMCSA to coordinate with the Federal Transit Administration (FTA) and the Office of the Secretary of Transportation to ensure fixed-route service operations comply with the requirements of the Americans with Disabilities Act (ADA). (According to 49 CFR Part 37, Subpart H, all buses acquired for fixed-route service must be equipped with a wheelchair lift. Until 100 percent of the fleet is equipped, operators must provide wheelchair lift service on 48 hours' notice.)

Public Citizen recommended FMCSA issue embossed or bolted-on CMV certification markings to aid Federal and State enforcement officials in determining the legal status of each vehicle, and that border-commercial-zone-only trucks be "visually distinguishable" from those allowed to operate beyond the border zones.

FMCSA Response: In response to Greyhound's comment, DOT has a long-standing interpretation that Canada- or Mexico-based motor carriers are subject to ADA requirements if they pick up passengers in the United States. If a Mexico-based charter or tour operator boarded passengers in Mexico, drove them to a point in the United States, and then returned the passengers to Mexico without picking up anyone in the United States, the ADA requirements would not apply. However, the ADA requirements would apply if the Mexico-based tour operator boarded passengers in the United States, transported them to Mexico, and returned them to the United States. Likewise, if a Mexico-based fixed-route operation between points in Mexico and the United States picked up passengers at any point in the United States, ADA rules would apply.

If a passenger has a concern about the manner in which a provider of interstate highway passenger transportation complies with the ADA, he or she should contact the U.S. Department of Justice (Justice), Civil Rights Division, Disability Rights Section.[2] FMCSA will coordinate with Justice to ensure the concern is addressed. FTA's jurisdiction concerning ADA compliance extends only to its public-agency grantees.

With regard to Public Citizen's comment, CMVs operated by Mexico-domiciled motor carriers are issued a USDOT number with a suffix indicating whether they are authorized to operate within or beyond the border commercial zones. By regulation, these unique USDOT numbers are prominently displayed on both sides of the CMV.

FMCSA Decision

After review and analysis of the public comments discussed in the preceding section, and in consultation with NHTSA, FMCSA determined it can effectively ensure motor carriers' compliance with applicable FMVSSs through continued vigorous enforcement of the FMCSRs, coupled with measures detailed in our enforcement policy memorandum regarding Mexico-domiciled carriers and vehicles. These new enforcement measures will begin immediately. We will compile data regarding Mexico-domiciled vehicles falsely certified as FMVSS compliant on the motor carrier's application for operating authority and, when appropriate, take necessary action as described in the policy memorandum.

This approach will help ensure the safety of Mexico-domiciled CMVs in real-world, operational settings while eliminating the potential drawbacks associated with requiring commercial motor vehicles to display an FMVSS certification label, as identified by many of the commenters to the NPRM.

We again emphasize all motor carriers operating in the United States must comply with all applicable laws and regulations, including all of the FMCSRs as well as those that cross-reference particular FMVSSs. Through our cross-references to FMVSSs, we require motor carriers to ensure their CMVs are equipped with specific safety devices and systems required by NHTSA on newly manufactured vehicles, and to maintain their vehicles to ensure continued safe performance. The roadside inspection program will ensure this is the case to the greatest extent practicable.

In view of the foregoing, the NPRM concerning certification of compliance with the Federal Motor Vehicle Safety Standards is withdrawn.

Issued on: August 19, 2005.

Annette M. Sandberg,

Administrator.

[FR Doc. 05–16967 Filed 8–25–05; 8:45 am]

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[2] 950 Pennsylvania Avenue, NW., Mail Code NYAV, Washington, DC 20530. Information is also available at *http://www.usdoj.gov/crt/drssec.htm.*

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567, 576 and 591

[Docket No. NHTSA–2005–22197]

RIN 2127–AI59, RIN 2127–AI60, RIN 2127–AI64

Retroactive Certification of Commercial Motor Vehicles by Motor Vehicle Manufacturers

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of withdrawal of proposed rulemakings and policy statement.

SUMMARY: This document completes NHTSA's consideration of its responsibilities to help implement the obligations of the United States under the North American Free Trade Agreement. The agency had proposed regulations to permit retroactive certification of foreign domiciled vehicles that, while built in compliance with U.S. standards applicable at the time of manufacture, had not been labelled as such. At the same time, the Federal Motor Carrier Safety Administration had proposed to require all commercial motor vehicles operating in the U.S. to have labels certifying compliance with the Federal motor vehicle safety standards (FMVSS).

After reviewing the comments on the NHTSA and FMCSA proposals, the Department has decided on a more effective and less cumbersome approach to ensuring that commercial motor vehicles were built to the FMVSS (or the very similar Canadian motor vehicle safety standards) and operate safely in the United States.

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FMCSA requires Mexican-domiciled carriers applying to operate in the United States to certify in their applications that their **vehicles** were manufactured or retrofitted in compliance with the FMVSSs applicable at the time they were built, and will confirm that certification during the pre-authority safety audit and subsequent inspections. In addition, enforcement through the Federal Motor Carrier Safety Regulations focuses on real world, operational safety and incorporates the various FMVSS applicable through the useful life of the vehicle.

FMCSA will not require **vehicles** to have labels certifying their compliance with the standards in effect when they were built, and NHTSA is not proceeding with a retroactive certification approach or the related proposal for a new recordkeeping and retention rule. We have also decided against placing a definition of the term ``import'' in the

Code of Federal Regulations. After considering the comments, we have concluded that creating a new regulation to define the term serves no regulatory function and is unnecessary for the promotion of motor vehicle safety.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may call Julie Abraham, Director of the NHTSA International Policy, Fuel Economy and Consumer Program, at 202-366-0846.

For legal issues, you may call Edward Glancy of the NHTSA Office of Chief Counsel, at 202-366-2992.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

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I. Background

A. U.S. Moratorium on Operating Authority for Mexican-Domiciled Motor Carriers

Since 1982, a statutory moratorium on the issuance of operating authority to Mexican-domiciled motor carriers has, with a few exceptions, limited the operations of such carriers to municipalities and **commercial** zones along the United States-Mexico border (``border

zone''). Bus Regulatory Reform Act of 1982, Public Law No. 97-261, 96 Stat. 1102 (1982). The nearly blanket moratorium, which initially applied to both Mexican- and Canadian-domiciled motor carriers, was lifted against Canada pursuant to a memorandum from President Reagan to the United States Trade Representative published in the Federal Register. 47 FR 54053; December 1, 1982.

The memorandum was issued after the United States and Canada agreed, via an exchange of letters, to lift certain trade restrictions that were prohibiting the free flow of goods across the U.S.-Canadian border. Safety of the Canadian **commercial** motor **vehicles** was not identified as an area of concern in these letters.

B. NAFTA-U.S. Commitments and the Moratorium

Groundwork for lifting the moratorium as to Mexican-domiciled **commercial** motor **vehicles** was laid on December 17, 1992, when the United States, Canada and Mexico signed the North American Free Trade Agreement (NAFTA or Agreement). Following approval by Congress, the Agreement entered into force on January 1, 1994. NAFTA establishes a free trade area, and its primary objectives are the promotion of free trade and investment through the elimination of trade barriers and the facilitation of cross-border movement of goods and services.

Annex I of NAFTA called for liberalization of access for Mexican-domiciled motor carriers on a phased schedule. Annex I: Reservations for Existing Measures and Liberalization Commitments, Schedule of the United States. Pursuant to this schedule, Mexican-domiciled charter and tour bus operations were to be permitted beyond the border zone on January 1, 1994. Truck operations were to have been permitted in the four United States border states in December 1995, and throughout the United States on January 1, 2000; scheduled bus operations were to have been permitted throughout the United States on January 1, 1997.

However, the United States postponed implementation with respect to Mexican-domiciled truck and scheduled bus service due to concerns about safety, continuing its blanket moratorium on processing applications by these Mexican-domiciled motor carriers for authority to operate in the United States outside the border zone.

On February 6, 2001, a NAFTA dispute resolution panel ruled that the blanket moratorium violated the United States' commitments under NAFTA. NAFTA Panel Established Pursuant to Chapter Twenty in the Matter of Cross-Border Trucking Services Final Report (Feb. 6, 2001), 40 I.L.M. 772.

C. NAFTA-Related Actions by the Department of Transportation

The Department of Transportation is now preparing for the implementation of the NAFTA provisions concerning Mexican-domiciled motor carriers. The Department is adopting and implementing appropriate and effective safety measures as the United States takes the steps necessary to comply with its obligations under NAFTA regarding the access of Mexican-domiciled motor carriers engaged in interstate commerce to the United States.

As part of that effort, NHTSA has been examining the question of what role it should play under a statute originally known as the National Traffic and Motor Vehicle Safety Act. That statute has been codified at 49 U.S.C. 30101, et seq. (In the interest of simplicity, we will refer to that statute as the Vehicle Safety Act.) The purpose of the Vehicle Safety Act is to reduce the number of crashes and deaths and injuries resulting from crashes.

Pursuant to the Vehicle Safety Act, NHTSA issues Federal motor vehicle safety standards (FMVSSs) that apply to new motor **vehicles** that

are manufactured for sale in the United States. The FMVSSs also apply, subject

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to certain exemptions, to new or used motor **vehicles** imported into the United States. The Vehicle Safety Act requires manufacturers to certify that their **vehicles**, at the time of manufacture, comply with all applicable safety standards. 49 U.S.C. 30112. Each manufacturer must give evidence of this certification by affixing to its **vehicles** a permanent label stating that the manufacturer certifies that the **vehicles** comply with all applicable safety standards. 49 U.S.C. 30115.

In 1975, NHTSA interpreted this provision of section 30112 as applying to all **vehicles** entering the United States. In a letter from the NHTSA Administrator to the Canadian Trucking Association, the agency stated that Canadian **commercial vehicles** transporting cargo into and within the United States are imports within the context of 49 U.S.C. 30112 and must be certified.\1\ Although the 1975 letter did not address the issue of Mexico-domiciled **commercial** motor **vehicles**, its rationale applied equally to those **vehicles**.

\1\ See letter dated May 9, 1975 from NHTSA Administrator James B. Gregory to M. C. Carruth, Docket No. NHTSA-02-11593.

Following the decision of the NAFTA panel in February 2001, NHTSA reviewed its 1975 interpretation. On March 19, 2002, we proposed to define the term ``import'' in the Code of Federal Regulations in a manner consistent with the 1975 interpretation and sought comment on that interpretation of that term (67 FR 12806, Docket No. NHTSA-02-11593).

FMCSA also issued an NPRM on that date, proposing to require that all **commercial** motor **vehicles** operating in interstate commerce in the United States have labels certifying their compliance with the FMVSSs in effect when they were built (67 FR 12782, Docket No. FMCSA 01-10886). FMCSA is the agency within the Department of Transportation that is responsible for oversight of **commercial** motor carriers engaged in interstate commerce. Its regulations address both the **commercial** motor **vehicles** \2\ (generally large trucks or passenger-carrying **vehicles**) operated in interstate commerce and drivers of those **vehicles**. The regulations also require **commercial** motor carriers, i.e., those businesses that engage in the transport of cargo or passengers, to meet specified operating requirements.

\2\ A ``**commercial** vehicle'' is any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle: (1) Has a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR)--or a gross vehicle weight (GVW) or gross combination weight (GCW)--of 4,536 kilograms (10,001 pounds) or more, whichever is greater; or (2) is designed or used to transport more than 8 passengers, including the driver, for compensation; or (3) is designed or used to transport more than 15 passengers, including the driver, whether or not it is used to transport passengers for compensation; or (4) is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, Subtitle B, Chapter I, Subchapter C. See

49 CFR 390.5.

In conjunction with those two proposals, NHTSA issued a request for comments on a draft policy statement providing that a vehicle manufacturer may, if it has sufficient basis for doing so, retroactively certify that a motor vehicle complied with all applicable FMVSSs in effect at the time of manufacture and affix a label to that effect (March 19, 2002, 67 FR 12790, Docket No. NHTSA 02-11594). To facilitate compliance further, FMCSA proposed a short-term exception from its proposed requirement, allowing a two-year grace period for carriers with existing operating authority to have their **vehicles** retroactively certified. New operators would have had to comply with the FMCSA requirement immediately. In addition, NHTSA issued an NPRM proposing recordkeeping requirements for manufacturers that retroactively certify their **vehicles** (March 19, 2002, 67 FR 12800, Docket No. NHTSA 02-11592).

The comment period for all four notices ended on May 20, 2002.

After careful consideration of the comments (which are discussed below) and also consistent with the actions being taken by FMCSA, we have decided to withdraw the three documents. The Department has developed a more effective and less cumbersome approach to ensure that **commercial** motor **vehicles** operating in the United States were originally built to the FMVSSs (or, as discussed below, the very similar Canadian motor vehicle safety standards (CMVSSs)) applicable at the time of their manufacture and operate safely in the U.S.

FMCSA, among other things, requires Mexican-domiciled carriers applying to operate in the United States to certify in their application that their **vehicles** were manufactured or retrofitted in compliance with the FMVSSs applicable at the time they were built and will confirm that certification during the pre-authority safety audit and subsequent inspections.

FMCSA's enforcement program will ensure that **commercial** motor **vehicles** operating in the United States comply with all of the operating and maintenance regulations necessary for real world safety. With only a few differences, the Canadian motor vehicle safety standards are identical to the U.S. manufacturing performance standards (the FMVSS), and FMCSA's operating regulations incorporate the FMVSS critical to continued safe operation. As necessary, FMCSA's enforcement program may use VINs and other available information to check that **commercial** motor **vehicles** operating in the U.S. were originally built to the FMVSS or CMVSS applicable at the time of their manufacture.

FMCSA will not require **vehicles** to have labels certifying their compliance with the standards in effect when they were built, and is withdrawing its proposal on that subject. NHTSA is not proceeding with a retroactive certification approach or the related proposal for a new recordkeeping and retention rule. We have also decided against placing a definition of the term ``import'' in the Code of Federal Regulations. After considering the comments, we have concluded that creating a new regulation to define the term serves no regulatory function and is unnecessary for the promotion of motor vehicle safety.

II. Summary of Comments

A total of 79 comments, many of them duplicative, were received in the docket for the four rulemakings. Most of the comments addressed the FMCSA notice proposing that all **commercial** motor **vehicles** operating in the U.S. be certified and be labeled as certified. However, several of the commenters also addressed the implications of the proposed definition of the word ``import'' and its impact on the existing open

U.S.-Canadian border and motor vehicle safety. Only a few commenters offered an opinion as to the validity of the interpretation on which the proposed definition of ``import'' was based.

Various trade organizations representing both motor carriers and truck manufacturers submitted comments generally opposed to the group of rulemakings. Representatives of the transit industry, labor organizations, vehicle insurers, and consumer groups filed comments that were generally supportive of the NPRM proposing to define ``import,'' but generally not supportive of the draft policy statement on retroactive certification or the proposed recordkeeping requirements. They were particularly concerned about the potential for fraud and abuse if retroactive certification were permitted. They were also opposed to the proposed grace period in the FMCSA rulemaking.

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Additionally, the Canadian government, as well as two of its provinces, Manitoba, and Newfoundland and Labrador, filed submissions. While the Canadian authorities noted that they understood and supported the right of the U.S. to ensure the safety of its roads, they said that inspection and crash data showed that Canadian **commercial vehicles** are at least as safe as U.S. **commercial vehicles**. They argued that, in those circumstances, extending the certification requirements to the Canadian **vehicles** amounts to a technical trade barrier under the WTO and NAFTA.

Canada emphasized the substantial similarity between the CMVSSs and the FMVSSs, as well as the similarity between their underlying statute and ours (both of which are over 30 years old). The CMVSSs are intentionally harmonized with the FMVSSs to the maximum extent possible. The exceptions are generally limited to labeling requirements (metric, both French and English) and those instances in which the Canadian environment is unique (mandatory daytime running lights because of long periods of twilight in many parts of the country).

Industry representatives agreed with Canada's assessment, noting that like the U.S., Canada has a long history of comprehensive and substantially similar safety standards that govern the manufacture of motor **vehicles**, including **commercial** trucks. They said that, in some instances, the Canadian standards are arguably more stringent than the U.S. standards. The Truck Manufacturers Association (TMA) stated that, from a safety perspective, the two major areas of difference between U.S. and Canadian heavy **vehicles** are the effective dates for anti-lock brake systems (ABS) and automatic brake adjusters. It argued, however, that this lag time is of no practical consequence in view of the requirement at 49 CFR 393.55 of the Federal Motor Carrier Safety Regulations (FMCSRs) that all **commercial** motor **vehicles** operating in the U.S. be equipped with ABS and automatic brake adjusters that meet the requirements of FMVSS No. 105, Hydraulic and Electric Brake Systems, or FMVSS No. 121, Air Brake Systems.

Canada also observed that the U.S. and Canada have engaged in mutual acceptance of safety rules related to **commercial** motor carriers (e.g., acceptance of **commercial** driver's license qualifications, vehicle inspection standards) since 1982, when the moratorium on issuing operating authority to Canadian-domiciled motor carriers was lifted. This system of mutual recognition has proven effective in maximizing cross-border trade, while ensuring that each country's legitimate safety concerns are sufficiently addressed.

The American Trucking Associations (ATA) argued that NHTSA should not interpret ``import'' to include the entrance of foreign **commercial** motor **vehicles** engaged in the transport of goods in the cross-border trade. It argued that this interpretation is inconsistent with the U.S.

conforming to the FMVSSs is to inspect each vehicle along with the documentation at the time of the pre-authorization safety audit. Without this initial, threshold confirmation of conformity with the FMVSSs, they argued, Mexican-domiciled motor carriers might certify their **vehicles** without any demonstrable proof of conformity.

III. NHTSA's Analysis of the Differences Between the FMVSSs and the CMVSSs

As noted by Canada in its comments, the FMVSSs and CMVSSs are issued under virtually identical statutes that were enacted over thirty years ago. The

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two statutory schemes both require manufacturers to certify that their **vehicles** comply with all applicable safety standards in effect at the time of manufacture and employ similar enforcement schemes. Both sets of standards are performance based, based on research and data, and generally do not dictate a particular design, although they may have the effect of prohibiting certain designs. NHTSA and Transport Canada, the Canadian regulatory agency tasked with implementing and enforcing its vehicle safety act, work closely in researching the causes and potential means of addressing deaths and injuries related to motor vehicle crashes.

In 1984, the Department of Transportation and Transport Canada signed Addendum 5, Traffic and Motor Vehicle Safety Research (Addendum 5), to the existing Memorandum of Understanding between Transport Canada and the United States Department of Transportation Concerning Research and Development Cooperation in Transportation (June 18, 1970). Addendum 5 initially addressed cooperative research activities related to traffic safety research, crash avoidance research, crashworthiness research, and road safety data collection and analysis. The results of these research activities were often used to initiate rulemaking activities. In the 1996 version of Addendum 5, NHTSA and Transport Canada agreed to extend the cooperation agreement formally to the rulemaking activities of the United States and Canada. The two agencies also agreed to meet at least once a year to review the status of their respective rulemaking actions, alert the other to rules potentially of interest, and discuss near-term rulemaking plans. In 2002, NHTSA and Transport Canada concluded a revision to Addendum 4, which renewed the cooperation agreement indefinitely in order to ensure continuation of collaborative activities between the two departments. A copy of Addendum 5, including all updated versions, has been placed in the docket.

As a result of both the similar statutory schemes and the longstanding cooperative relationship between the two regulatory agencies, as well as the similarity in their physical environments and population, the FMVSSs and CMVSSs mirror each other in almost all substantive respects, especially as they apply to heavy trucks and buses.

NHTSA has evaluated the differences between the FMVSSs and the CMVSSs that apply to heavy trucks and buses (over 4,536 kg (10,000 lb) GVWR). We shared our analysis with Transport Canada, which provided additional feedback. Tables 1 and 2 in the appendix to this document generally outline the similarities and differences between the two sets of standards. We believe the efforts of both agencies have identified all of the significant differences between the two sets of standards as they apply to these **vehicles**.

As an initial matter, we note that this analysis is neither a

tentative nor a final determination of functional equivalence. NHTSA has a formal process that allows for functional equivalence determinations with the consequence being a change in the standard that may be utilized by any manufacturer. Rather, today's analysis recognizes the tremendous similarity between the respective standards. In most instances, no amendment would be needed. The regulatory requirements already mirror each other. In some instances, minor differences exist and a series of minor changes to the FMVSS would be required in order for us to determine that the respective standards are functionally equivalent. We have decided against such an approach. Rather, we believe that the manufacture or retrofitting of **vehicles** in compliance with either the FMVSS or CMVSS ensures sufficient adequate design integrity to meet the safety concerns posed by the operation of **commercial** motor **vehicles** on the nation's highways as long as the **vehicles** also meet all FMCSRs.

Given the similarities between the two sets of standards and the existing manufacturer compliance practices, it is neither difficult nor impermissible for a **commercial** motor vehicle certified to the CMVSSs to meet the substantive requirements of the FMVSSs. We have identified 14 FMVSS/CMVSS pairs of standards that have differences. Most of these have only minor differences in performance values, with Canadian requirements that are at least as stringent as, and possibly stricter than, the corollary requirements in the FMVSSs. For example, one of the Canadian standards, CMVSS No. 301.1, has no U.S. counterpart, while another, CMVSS No. 301.2, has broader applicability than the corollary FMVSS Nos. 303 and 304.

The differences between Canadian standards and other U.S. standards like FMVSS Nos. 101, 105, and 121 relate solely to information on the instrument panel. These are designed to relay specific information to the vehicle operator and may be based on the customs and practices of the respective countries. We believe these differences do not have any consequence so long as the vehicle operator is familiar with the vehicle. Indeed, NHTSA and Transport Canada are involved in a harmonization effort that would eliminate most of these differences.

The remaining differences are not likely to pose safety problems. Portions of FMVSS No. 108 (reflective tape on trailers and allowance of European head lamps) and FMVSS Nos. 223 and 224 (underride prevention) have no Canadian counterpart. However, according to the CTEA, all Canadian trailers entering the United States already meet the applicable underride requirements of FMVSS Nos. 223 and 224 because of the underride requirements in the FMCSRs. Similarly, while CMVSS No. 108 allows single-colored reflective tape on trailers, the Canadian trailers used in the cross-border trade meet the requirements of FMVSS No. 108, in part because of the requirement in the FMCSRs that they do so. Finally, the TMA polled its Canadian members and has determined that no Canadian truck manufacturers are using European headlamps, even though the standard allows them. Communications submitted by CTEA documenting these statements have been placed in the docket.

As a result of our analysis, we have determined that allowing **commercial** motor **vehicles** certified to the Canadian motor vehicle safety standards rather than the U.S. motor vehicle safety standards to operate in the United States will have no negative safety consequences. Accordingly, requiring these **vehicles** to be certified twice, once to the CMVSSs and then secondarily to the FMVSSs, would impact U.S./Canada trade and impose requirements on the Canadian motor carriers, both in terms of cost and access to the U.S. market that cannot be justified.

IV. Impact of a Certification Requirement on Canadian- and Mexican-Domiciled **Commercial** Motor Carriers

Customs classification of such **vehicles** as ``instruments of international commerce,'' instead of ``imports.'' The province of Newfoundland and Labrador argued that **commercial vehicles** that enter the U.S. for purpose of the carriage of goods or passengers should not be considered imports unless there is a change of ownership such that the vehicle can no longer be considered foreign-domiciled.

The Transportation Trades Department of the AFL-CIO (TTD), International Brotherhood of Teamsters (IBT), American Insurance Association (AIA), Public Citizen and Advocates for Highway and Auto Safety (Advocates) all believe NHTSA's 1975 interpretation of the import prohibition should be applied today, that it is based on ``unequivocal'' statutory language, and that it is needed to ensure the safety of our roadways. However, their comments and criticisms were limited to the impact of non-certified **commercial** motor **vehicles** coming into the United States from Mexico.

AIA pointed out that the NAFTA panel decision specifically allows for U.S. safety agencies to impose measures that guarantee the safe operation of trucks in the U.S., even if those measures impose limitations or requirements on Mexican-domiciled motor carriers that are not imposed on U.S.- or Canadian-domiciled carriers. It also noted that a lack of sufficient guarantees of safety, as a general rule, makes a class of business less insurable or increases the cost of coverage. The IBT argued that the application of vehicle safety requirements to Mexican carriers is consistent with the policy expressed by Congress in the Murray-Shelby legislation (section 350 of the 2002 DOT Appropriations Act, Pub. L. 107-87) regarding the importance of preventing unsafe **commercial** motor **vehicles** from entering the U.S.

The Amalgamated Transit Union (ATU) and Greyhound, as well as AIA, argued that all **commercial** motor **vehicles** should be required to have a sticker or plate (i.e., a FMVSS certification label) before they are allowed to operate in the U.S., regardless of whether they have previously been allowed to operate in this country. They argued also that the grace period contemplated in the FMCSA proposal was inappropriate.

Various commenters claimed that the vast majority of Mexican-manufactured buses did not comply with the FMVSSs when originally manufactured, and do not comply now (particularly as to brakes, fuel systems, windows, and emergency exits). They also said that it is apparent from the FMCSA/NHTSA notices, when considered together, that many thousands of Mexican carriers have been traveling into the U.S. for many years without conforming to the U.S. safety standards. They argued that non-compliant **commercial** motor **vehicles** present a special safety hazard on U.S. roads, and non-compliant motor coaches, in particular, are especially dangerous for both bus passengers and other highway users. They believe the requirement that all **vehicles** display a valid FMVSS certification label would rectify this problem.

Advocates and AIA tentatively supported the concept of retroactive certification, although they expressed some concerns about the program, most notably the possibility of the issuance of mistaken, unsupported, or fraudulent certifications. They argued that the large population of ineligible Mexican **vehicles** would inevitably encourage the issuance of false certifications and the production of fraudulent labels. They also argued that the proposed policy statement does not provide sufficient safeguards to ensure that only those **vehicles** that, in fact, complied when originally manufactured (or are subsequently modified to achieve compliance) would actually be certified. Finally, they claimed that since Mexican manufacturers and carriers are unfamiliar with the FMVSSs, and there is no labeling requirement in Mexico, the only way to verify compliance of each Mexican-manufactured vehicle certified as

A. Federal Motor Carrier Safety Regulations

The condition of safety equipment and features on **commercial** motor **vehicles** is governed by 49 CFR Part 393, Parts and Accessories Necessary for Safe Operation. The Vehicle Safety Act, 49 U.S.C. 30103(a), specifically requires the FMCSRs be fully consistent with the FMVSSs. The provision does not require FMCSA to adopt all applicable FMVSSs as FMCSRs. However, if the item of equipment is regulated by the FMCSRs, then they must do so in a manner consistent with the FMVSSs. Section 30103(a) states:

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The Secretary of Transportation may not prescribe a safety regulation related to a motor vehicle subject to subchapter I of chapter 135 of this title [49 U.S.C. 13501 et seq.] that differs from a motor vehicle safety standard prescribed under this chapter [49 U.S.C. Sec. Sec. 30101 et seq.]. However, the Secretary may prescribe, for a motor vehicle operated by a carrier subject to subchapter I of chapter 135 [49 U.S.C. 13501 et seq.], a safety regulation that imposes a higher standard of performance after manufacture than that required by an applicable standard in effect at the time of manufacture.

Because of the cross-reference in the Vehicle Safety Act to 49 U.S.C. 13501, et seq., foreign-domiciled **commercial** motor **vehicles** engaged in interstate commerce are already subject to requirements based on most of the FMVSSs applicable to heavy trucks and buses. In most instances, the FMCSRs directly cross-reference the applicable portions of the FMVSSs that apply to the regulated **vehicles**. Further, the FMCSRs require that all motor carriers operating in the United States maintain much of the safety equipment and features that NHTSA requires vehicle manufacturers to install.

In the case of many manufacturing standards, for example where a compliance symbol is placed on the piece of equipment, a visual inspection is sufficient to verify compliance. With respect to other manufacturing standards, most notably the braking standards, a roadside inspection cannot tell the inspector whether the safety equipment, as originally manufactured, was effective enough to have actually complied with the applicable FMVSS. In these instances, however, the operating standard itself is designed to ensure that the motor vehicle is currently operating in a safe condition. Indeed, many of these types of standards involve aspects of motor vehicle performance that do not remain constant over the life of the vehicle. Thus, some FMCSRs address the current operational safety of components which wear over the life and use of the vehicle, while others cross-reference FMVSSs to ensure that required equipment is in place and maintained. In this way, the FMVSSs and FMCSRs comprise a consistent and mutually-supportive set of regulations, as intended by Congress in the Vehicle Safety Act.

B. Canadian-Domiciled **Commercial** Motor **Vehicles**

1. Volume of the U.S.-Canadian Cross-Border Trade

Canada and the U.S. have the largest bilateral trade relationship in the world, with the vast majority of goods exported from each country being carried via **commercial** motor **vehicles** (65% for Canada, 80% for U.S.). According to Canada, this trade generates 13 million truck trips across the U.S.-Canadian border annually, and represents

more than 25% of the Canadian for-hire trucking revenues.

Industry representatives have proffered similar figures. According to the Canadian Trucking Association (CTA), the total merchandise trade between the U.S. and Canada is valued at almost $600 billion (2001 dollars). Typically about 70%, by value, of that trade is carried by truck, leading to more than 13 million truck trips across the U.S.-Canadian border. Trade by truck is crucial to maintaining shippers' just-in-time delivery schedules. CTA estimates that approximately 70,000 (out of 225,000) Canadian truck drivers enter the U.S. each year.

Canada contended that the proposed rules would make it impossible for many Canadian motor carriers to operate in the U.S. The small fleets and owner-operators (more than 50% of the Canadian carriers) would be the most substantially impacted.

2. Impact of the Proposed Rules on Canadian Motor Carriers

The Canadian fleets are not segregated into ``domestic'' or ``international'' equipment. Accordingly, the CTA argued that, from a practical standpoint, all Canadian **vehicles** would have to be retroactively certified and fitted with a FMVSS label in addition to the existing CMVSS label if the proposed labeling requirement were adopted. We agree that, if true, that would constitute a significant burden on the Canadian fleet.

TMA claimed that the vast majority of carriers that would seek retroactive certification under the proposed policy statement would be domiciled in Canada rather than Mexico. It noted that in 2000 there were approximately 700,000 heavy **commercial** motor **vehicles** (greater than 10,000 lb GVWR) registered in Canada. Since 87% of Canada's merchandise trade is with the U.S. and most of this merchandise is transported to the U.S. in **commercial** motor **vehicles**, a large portion of these 700,000 **vehicles** would need to be retroactively certified. According to TMA, retroactive certification for such a large number of **vehicles** would be both costly and time-consuming. Since these **vehicles** are already certified to the substantially similar CMVSSs and are already operating in the U.S. without a U.S. certification label, TMA argued that the increase in safety benefits that result from retroactive certification would be minimal at best.

TMA also noted that NHTSA, in proposing to place a definition of the term ``import'' in the CFR, did not offer any data indicating that the Canadian **vehicles** currently operating in the U.S. are unsafe. Accordingly, they suggested there is no safety need for the proposed regulation. Additionally, TMA and CTA argued that the most important influence on in-use vehicle safety is the level and quality of maintenance, driver performance, and the environment in which the vehicle is operated. The FMVSSs do not address the condition of a vehicle after it has been sold and put into service.

Canada also argued that complying with the certification requirements after-the-fact would be very difficult and costly, and, in many instances, impossible. Because the useful life of a **commercial** motor vehicle (particularly trailers) is well in excess of the Canadian 5-year record retention requirement, retroactive certification would, in many cases, be impossible. Additionally, many manufacturers have indicated to the Canadian government that they would not retroactively certify their **vehicles**. To the extent they were willing and able to retrofit these **vehicles**, they would pass the cost of certification onto the carrier. According to CTA, the cost of retroactive certification is impossible to determine. However, assuming the cost would be $1,000 per vehicle,\3\ Canadian motor carriers would have to spend at least $250 million to comply with a FMVSS label requirement and would lose the valuable use of their **vehicles** while they are being certified.

\3\ CTA's cost estimate was premised on the following assumptions:

Each and every piece would have to be taken out of service for a period of time; returned to the manufacturer of deliverer to a registered importer; receive certification; and then returned to the vehicle fleet. Depending on the length of time required, the motor carrier may have to lease replacement equipment. Presumably manufacturers, and certainly registered importers, would charge a fee for service.

CTA further argued that ``since carriers do not segregate their fleet into `domestic' and `international' equipment, from a practical standpoint, all equipment in fleets with cross-boarder operations would fall under the proposed labeling requirements.''

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3. Safety Record of **Commercial** Motor **Vehicles** Selected for Inspection

According to data collected by the FMCSA, concerning the out-of-service rates of **commercial** motor **vehicles** selected for roadside inspection in this country, Canadian **commercial** motor **vehicles** appear to have a lower out-of-service rate than do U.S.-domiciled **commercial** motor **vehicles**. These data are shown in the table below. It is

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important to note that the roadside inspection data are not statistically representative of all **commercial** motor **vehicles**, since States typically select **commercial** motor **vehicles** for inspection based upon the operating motor carrier's safety record, as well as indicators of potential safety problems noted when a vehicle enters an inspection facility. Thus, FMCSA and State inspectors focus their inspections on **vehicles** thought to have an above average likelihood of having safety problems. Further, the number of inspections performed on Mexico-domiciled **commercial** motor **vehicles**, particularly long-haul **commercial** motor **vehicles**, is a minute fraction of the total. Virtually all of the ``Mexico--all'' inspections were performed on short haul drayage operations during which Mexican-domiciled **vehicles** enter the U.S. not farther than the **commercial** zone along the border. Those **vehicles** are typically older than the Mexican-domiciled **vehicles** used in long haul operations.

Out-of-Service Rates by Country of Domicile

	Total number of vehicle inspections	Vehicle inspections with a FMCSR violation
FY 1999:		
All inspected **vehicles**	1,387,236	935,453
Canada	33,655	18,496
Mexico--long haul	19,695	17,362
Mexico--all	38,236	33,544
U.S	1,315,345	883,413
FY 2000:		
All inspected **vehicles**	1,488,023	1,002,187
Canada	38,207	21,668

Mexico--long haul	23,275	19,900
Mexico--all	51,202	43,233
U.S.	1,398,614	937,286
FY 2001:		
All inspected **vehicles**	1,610,780	1,114,754
Canada	40,276	23,474
Mexico--long haul	25,175	21,569
Mexico--all	64,892	54,806
U.S.	1,505,612	1,036,474
FY 2002:		
All inspected **vehicles**	1,712,628	1,158,576
Canada	62,344	31,365
Mexico--long haul	27,702	23,484
Mexico--all	89,566	73,750
U.S.	1,560,718	1,053,461
FY 2003:		
All inspected **vehicles**	1,771,845	1,194,709
Canada	55,439	27,642
Mexico--long haul	29,052	23,952
Mexico--all	137,211	113,155
U.S.	1,579,195	1,053,912
FY 2004:		
All inspected **vehicles**	1,905,244	1,286,227
Canada	58,960	30,425
Mexico--long haul	12,799	9,452
Mexico--all	150,378	123,268
U.S.	1,695,906	1,132,534
FY 2005: *		
All inspected **vehicles**	912,693	619,794
Canada	27,092	14,313
Mexico--long haul	5,106	3,396
Mexico--all	88,159	71,560
U.S.	797,442	533,921

* Inspections through April 21, 2005.

C. Mexican-Domiciled **Commercial** Motor **Vehicles**

Our understanding is that the **commercial** motor **vehicles** manufactured in Mexico are produced either by subsidiaries of American companies such as Freightliner and International, or by the European-based company Scania. There are currently significant differences between the applicable manufacturing standards of the United States and the European Union. It is unlikely that a vehicle built by a European manufacturer to the European standards would have all the safety equipment needed to comply with either the FMCSRs or the FMVSSs.

However, according to information provided by the TMA, U.S. manufacturers or their affiliates provide the majority of the heavy trucks domiciled in Mexico.\4\ According to the

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TMA,\5\ U.S. manufacturers have been building their Mexican-domiciled **vehicles** in conformity with the FMVSSs since the mid to late 1990s, and over 50,000 U.S.-certified heavy trucks have been sold in the Mexican market since 1993. KenMex, a subsidiary of Paccar Inc., began affixing U.S. certification labels to all **vehicles** built for the Mexican market that met all applicable U.S. safety standards in that year. International, Freightliner, and Volvo began certifying most or all of their **vehicles** to the FMVSSs in 1996, 1997, and 1998, respectively. TMA

estimates that approximately 4,500 additional heavy trucks produced by these manufacturers were built in accordance with then applicable U.S. safety standards, although not labeled as such.\6\

\4\ The rest are either produced by Scania or are built in two or more stages, with the chassis manufactured by a U.S. manufacturer and a Mexican final stage manufacturer completing the manufacturing process. It is doubtful that any of these **vehicles** would or could be certified to the FMVSSs.

\5\ A letter from TMA providing a breakdown of the Mexican heavy truck market is in the docket. Docket NHTSA-2004-11593-22.

\6\ We believe that the vast majority of Mexican-domiciled **vehicles** engaged in U.S. long haul traffic either carry the label or were originally built to then applicable U.S. standards. Those potentially not originally built to U.S. standards are generally used only in the short haul drayage operation within the **commercial** zone. As noted earlier, FMCSA and state inspections currently focus on these **vehicles**.

The information provided by TMA members provides sufficient assurance that a substantial number of Mexican-domiciled **vehicles** originally built to the Federal motor vehicle safety standards will be able to engage in cross-border trade between the U.S. and Mexico.

V. FMCSA's Enforcement Policy

After carefully reviewing the comments filed in response to the FMCSA and NHTSA proposals, including the potential for fraud that was noted in the proposals, the Department has developed a more effective approach for ensuring that **commercial** motor **vehicles** were built to the FMVSS (or the very similar Canadian motor vehicle safety standards) and operate safely in the United States. Rather than relying on retroactive labelling, FMCSA is continuing and reinforcing its program focused on operational safety requirements applicable to current conditions.

First, FMCSA requires Mexican-domiciled carriers applying to operate in the United States to certify in their applications that their **vehicles** were manufactured or retrofitted in compliance with the FMVSSs applicable at the time they were built. False certification subjects the carrier to suspension or revocation of its license to operate in the United States. (49 CFR Part 365)

Second, enforcement through the Federal Motor Carrier Safety Regulations focuses on real world, operational safety and incorporates the various FMVSS applicable through the useful life of the vehicle.\7\ FMCSA will continue to focus on assessing compliance with the FMCSRs, including those regulations that cross reference the FMVSSs (e.g., lamps and reflectors, air brake systems [including antilock brake systems], rear impact guards on trailers, conspicuity treatments on truck tractors and trailers, emergency exits on buses, etc.).

\7\ We note that a label certifying compliance with performance standards applicable to lights, brakes and other wear items does not ensure real world safety in the absence of the FMCSRs, especially with regard to **vehicles** built many years ago. The American public is better protected by the FMCSRs than solely through a label indicating that a **commercial** motor vehicle had originally been built to certain manufacturing performance standards.

Third, FMCSA may use Vehicle Identification Numbers (VINs) coupled with VIN information obtained from vehicle manufacturers, as well as other available information, when necessary to check whether **vehicles** were originally built to the FMVSSs.

We have concluded that the incorporation of numerous FMVSS into the FMCSRs, combined with the various certification and inspection procedures being adopted by FMCSA, will better ensure the operational safety of **commercial** motor vehicle on the public roads than a program of retroactive certification potentially fraught with fraud. Accordingly, we have determined that the regulatory scheme proposed in March 2002 would serve no meaningful safety function and are withdrawing the proposal for retroactive certification and record keeping.

VI. NHTSA's Interpretation of the Import Prohibition in the Vehicle Safety Act

In addition to proposing a regulatory scheme of retroactive labelling, the agency proposed including in the Code of Federal Regulations a definition of the word ``import'' based on a 1975 interpretive memo. The word ``import'' appears in 49 U.S.C. 30112, which prohibits a motor vehicle from being placed into interstate commerce or imported into the U.S. unless it is certified as complying with the FMVSS applicable at the time. NHTSA operates an extensive Registered Importer program to ensure that **vehicles** imported for sale and permanent use in the U.S. comply with this requirement. The question here is whether the word ``import,'' as used in this statute, necessarily applies to **commercial** motor **vehicles** that may be used temporarily in the United States and that are subject to an alternative regulatory program designed to ensure the **vehicles** operate safely on the U.S. roads.

After reviewing the various comments, all of which raised concerns regarding the practical application of the proposed definition of the term ``import'' as used in the Vehicle Safety Act, we decided to re-examine some of the basic assumptions made in the three documents that supported the agency's 1975 interpretation. We have delved more thoroughly into the language of the entire Vehicle Safety Act, as well as Congress' intent vis-[aacute]-vis the treatment of **commercial** motor **vehicles** under the Act. Additionally, we decided to reevaluate the existing case law relevant to the use of the term ``import'' outside of the context of tariff law to see whether and how other statutes define the term. Finally, we looked at additional factors and in additional contexts that were not considered in developing the 1975 interpretation. We believe the term ``import'' is subject to various interpretations, of which the agency's 1975 interpretation is but one. We do not believe it is the only reasonable interpretation. Accordingly, based on the comments we have received, and our research and evaluation, we have decided against adding a definition of the term in the Code of Federal Regulations, and we have decided to withdraw the agency's 1975 interpretation.

A. NHTSA's 1975 Interpretation

The proposed interpretive rule was based, in large part, on the analyses contained in the 1975 letter from NHTSA's Administrator, James Gregory, to the Canadian Trucking Association (1975 letter) and in an internal 1975 legal memorandum that preceded that letter. (The 1975 letter and memorandum were placed in the docket for the NPRM.) Both the 1975 letter and the legal memorandum concluded that entrances of

Canadian-domiciled **commercial** motor **vehicles** into the United States were importations under the Vehicle Safety Act and were not subject to any exceptions under that Act. The letter was issued in response to a request by the Canadian Trucking Association that Canadian-domiciled **commercial** motor **vehicles** be excluded from the requirements of FMVSS No. 121, Air brake systems. At the time, Canada did not have a corollary standard.

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In concluding that Canadian **vehicles** were imports within the meaning of the Vehicle Safety Act, the agency interpreted the term ``import'' in the former section 108(a)(1) of the Act (now codified at 49 U.S.C. 30112(a)(1)) when read in conjunction with the exemptions provided in section 108(b)(4). Section 108(a)(1) stated that:

No person shall manufacture for sale, sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or item of motor vehicle equipment manufactured on or after the date any applicable Federal motor vehicle safety standard takes effect under this title unless it is in conformity with such standard except as provided in subsection (b) of this section.

Section 108(b)(3) stated that motor **vehicles** or equipment offered for **importation** in violation of section 108(a)(1) would be refused admission into the United States under joint regulations to be issued by the Secretary of Treasury and the Secretary of Commerce. Under an exception in section 108(b)(3), those regulations could authorize imports as long as the **vehicles** were subsequently brought into conformity with all applicable safety standards, but otherwise the **vehicles** would have to be exported or abandoned to the United States. The exception did not specify that the regulations only address those **vehicles** imported for sale or resale, although it is unlikely that anyone would so modify a vehicle unless it were to be permanently domiciled in the United States. Section 108(b)(4) authorized the issuance of joint regulations that would permit the temporary **importation** of used motor **vehicles**.\8\

\8\ As explained in the House Report on the Act, the purpose of section 108(b)(4) was to ``accommodate foreign tourists who may bring their **vehicles** with them on visits to this country and also to permit import of certain **vehicles** for diplomatic use. H. Rep. 1776, 89th Cong., 2d Sess., p.24.

The agency noted that the exceptions for non-complying imports in section 108(b)(3) of the Act and temporary **importation** of personal **vehicles** in section 108(b)(4) of the Act would not be needed if foreign-domiciled **vehicles** that were not sold in the United States were not considered imports under section 108(a). The language of the exceptions is the strongest evidence that Congress intended the term ``import'' to apply to all **vehicles** brought into the United States.

In our NPRM proposing the formal adoption of the 1975 interpretation, we relied on what we then believed was a ``plain meaning'' of the term when considered in conjunction with the overall purpose of the Vehicle Safety Act, relying exclusively on the analysis proffered in 1975. We did not revisit the original analysis of whether the Vehicle Safety Act was in fact akin to the statutes underlying the

(27)

cases relied on in issuing the original interpretation, or whether other analyses might be more applicable.

B. Possible Alternative Interpretations of the Import Prohibition

The term ``import'' in a statute may be interpreted differently based upon the intent of Congress in using the term. When Congress does not specifically define a particular term, its meaning should be construed in such a way as to further the goals that Congress was seeking to achieve when enacting the law. See Barnhart v. Walton, 122 S. Ct. 1265,1270 (2002); United States v. Haggar Apparel Co., 526 U.S. 380,392, 119 S. Ct. 1392, 1398 (1999), citing Nations Bank of N.C.N.A. v. Variable Annuity Life Ins. Co., 513 U.S. 251, 257, 115 S. Ct. 810, 813-814 (1995). Congress' stated goal in enacting the Vehicle Safety Act was ``to reduce traffic accidents and deaths and injuries resulting from traffic accidents. 49 U.S.C. 30101.

The statute should not be viewed in isolation, but rather in conjunction with other, relevant statutes. See Kokoszka v. Belford, 417 U.S. 642, 650, 94 S.Ct. 2431, 2436 (1974), citing Brown v. Duchesne, 60 U.S. 183, 194 (1856). **Commercial** motor **vehicles** are subject to regulation under both the Vehicle Safety Act (codified as 49 U.S.C. Chapter 301, Motor Vehicle Safety) and 49 U.S.C. Chapter 311, **Commercial** Motor Vehicle Safety. One of the Congressionally stated purposes for Chapter 311, Subchapter III, Safety Regulation, is ``to promote the safe operation of **commercial** motor **vehicles**.'' 49 U.S.C. 31131(a). The Federal Motor Carrier Safety Administration implements this statute in large part through enforcement of the Federal Motor Carrier Safety Regulations.

In the NPRM, the agency referred to a dictionary definition of the word ``import,'' meaning ``to bring in (merchandise, commodities, workers, etc.) from a foreign country for use, sale, processing, reexport or services'' (Random House Compact Unabridged Dictionary, Special Second Edition). The dictionary also defines the term as ``the act of importing or bringing in; **importation**, as of goods from abroad.'' Black's Law Dictionary also provides slightly differing definitions: ``a product brought into a country from a foreign country where it originated'' versus ``the process of bringing foreign goods into a country'' (Black's Law Dictionary, Seventh Edition, 1999).

1. Import--Illegal Goods Definition

Courts have broadly defined the term ``import'' in cases involving prohibited products that the government has seized. An example is Cunard v. Mellon, 262 U.S. 100 (1929), the case primarily relied upon by NHTSA in its 1975 analysis as supporting its ``plain language'' approach. The case addressed an interpretation of the National Prohibition Act, which prohibited the manufacture, sale and transportation, **importation**, and exportation of alcohol in or from any U.S. territory other than direct transport through the Panama Canal Zone. The statute was enacted in response to passage of the Eighteenth Amendment. The Court determined that the National Prohibition Act's criminal prohibition on bringing alcohol into the United States (including its territorial waters) required a broad definition of the term ``import'' as used in the statute, since such a reading ``better comports with the object to be attained,'' i.e., the total ban on alcoholic beverages in the United States other than those liquors ``obtained before the act went into effect and kept in the owner's dwelling for use therein by him, his family, and his bona fide guests.''

Similar analysis can be found in more recent cases interpreting the criminal prohibition on ``**importation**'' of controlled substances (e.g., heroin, morphine, and cocaine), where ``import'' is expressly and

broadly defined by statute as ``any bringing in or introduction of such article into any area (whether or not such bringing in or introduction constitutes an **importation** within the meaning of the tariff laws of the United States).'' \9\ (21 U.S.C. 951 et seq.) (See generally, U.S. v. Catano, 553 F.2d 497 (5th Cir. 1975); U.S. v. Lewis, 676 F.2d 508 (11th Cir. 1982); and U.S. v. Perez, 776 F. 2d 759 (9th Cir. 1985).)

\9\ See also, 16 U.S.C. 1151, et seq., generally prohibiting **importation**, sale, or possession of North Pacific fur seal skins; 16 U.S.C. 1531, et seq., generally prohibiting **importation**, sale, or possession of endangered fish and wildlife; and 16 U.S.C. 2401, et seq., generally prohibiting **importation**, sale, or possession of birds, mammals, or plants native to Antarctica, where ``import'' is defined by statute as bringing into the jurisdiction of the United States, regardless of whether such act constitutes an **importation** within the meaning of customs law.

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2. Import--Definition Used in Determining Whether an Item Brought Into the U.S. Is Subject to Tariff

Since 1926, courts have consistently held that in tariff cases, unless it clearly appears that Congress intended

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otherwise, the term ``**importation**'' means the bringing of goods within the jurisdictional limits of the U.S. with the intent to unlade. However, the courts have held that this definition is not literally applicable to a seagoing vessel or yacht entering the United States under its own power. Instead, they have given deference to a Treasury Department ruling cited in Estate of Lev H. Prichard v. United States, 43 CCPA 85, 87-88, CAD 612 (1956), which stated that ``if coming into this country temporarily as carriers of passengers or merchandise, they [vessels] are not subject to customs entry or the payment of duty, but if brought into the United States permanently they are to be considered and treated as imported merchandise.'' The court said that the question as to whether a vessel is brought into the United States ``permanently'' must be determined on the basis of intent. (See generally, American Customs Brokerage Co., Inc. v. United States, 375 F.Supp. 1360, 1366 (C.C.P.A., 1974).)

3. Import--Use of Tariff Definition in Non-Tariff Context

A third alternative is that contained in the Harmonized Tariff Schedule of the United States (HTSUS), even though the underlying statutory concern is not tariff-related. In 1999, the Environmental Protection Agency (EPA) took this approach in a final rule establishing an emission control program for certain new marine diesel engines pursuant to the Clean Air Act (64 FR 73300, December 29, 1999). The final rule is codified at 40 CFR Part 94. One of the issues addressed by the final rule was how the application to ``new marine engines'' would affect the engines on foreign vessels that were engaged in international trade. The EPA specified that, with respect to imported engines, ``new marine engine'' means an engine that is not covered by a certificate of conformity at the time of **importation**, and that was manufactured after the starting date of the emission standards which are applicable to such engine (or which would be applicable to such engine had it been manufactured for **importation** into the United States). It then specified prohibitions against certain acts by all persons with respect to the engines covered by the regulation.\10\

\10\ 40 CFR Part 94, Subpart I allows for some temporary importations with specified bond requirements (see 40 CFR 94.804).

For the purposes of determining what constitutes an **importation** within the ``new marine engine'' definition, and consequently an **importation** under the prohibition, the EPA decided to adopt the approach contained in the HTSUS. Under the HTSUS, vessels used in international trade or commerce and personal pleasure craft brought into the territorial United States by non-residents are admitted without formal customs consumption entry or the payment of a duty. EPA said that its approach was consistent with the Treasury Department ruling cited in Prichard discussed above. (See discussion at 64 FR 73300, 73302.) \11\

\11\ The Environmental Protection Agency (EPA) recently considered whether it should amend its interpretation of ``new marine engines'' to include engines in foreign-flag vessels, regardless of whether the presence of those vessels in U.S. ports would be treated as an import under HTSUS. Proposed rule; 67 FR 37548; May 29, 2002. It expressed concerns that the emissions of foreign-flagged **commercial** vessels may contribute significantly to problems in the U.S. since U.S.-flag vessels only account for 6.7% of all vessels entering U.S. ports. In the final rule, EPA did not decide whether it had the discretion to interpret new to include foreign vessels. It indicated that deferring this decision may help facilitate the adoption of more stringent consensus international standards, and noted that a new set of internationally negotiated marine diesel engine standards would apply to engines on all vessels, regardless of where they are flagged. Final rule; 68 FR 9746, 9759; February 28, 2003. In any event, the circumstances addressed by EPA, i.e., the application or non-application of a solitary Federal regulatory program, are not closely analogous to those before this agency.

C. Factors Not Considered in the 1975 Interpretation or NPRM

1. U.S. Customs Regulations in Effect in 1966

Neither the documents NHTSA relied upon when proposing an interpretive rule nor the preamble of that notice addressed the U.S. Customs regulations in effect when the Vehicle Safety Act was enacted. The 1963 Tariff Schedule specifically excluded **commercial** motor **vehicles** from entry requirements so long as the **vehicles** did not engage in local traffic in the United States.\12\ This exclusion was adopted as part of the implementation of the Tariff Act of 1930, which provided that ``**vehicles** and other instruments of international traffic, of any class specified by the Secretary of the Treasury, shall be granted the customary exceptions from the application of customs laws to such extent and subject to terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury.'' (19 U.S.C. 1322(a)). Because the foreign-domiciled **commercial** motor **vehicles** were not subject to entry under the existing Tariff Schedule when the Vehicle Safety Act was passed, any prohibition on allowing non-compliant **commercial** motor **vehicles** into the United States could not be enforced at the border without significantly amending those regulations in a manner inconsistent with the Tariff Act of 1930.\13\

\12\ The prohibition against engaging in local traffic was the result of cabotage laws in effect at the time. These laws were designed to prevent foreign carriers from engaging in the purely domestic transport of goods or passengers. Corollary laws applied to foreign-owned railroads, airlines and merchant vessels.

\13\ U.S. Customs regulations currently provide that trucks, buses and other **vehicles** in international traffic shall be subject to the treatment specified in part 123 (19 CFR 10.41(a)), and that they may be admitted without formal entry or the payment of duty (19 CFR 123.14(a)).

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2. Treatment of Canadian-Domiciled **Commercial** Motor **Vehicles**

None of the three previous NHTSA documents addressed the fact that throughout all the different legislative activities addressing **vehicles** brought into the United States, Canadian-domiciled **commercial** motor **vehicles** were allowed to operate in the cross-border trade without being subject to formal entry. In 1966, when the Vehicle Safety Act was enacted, both the Mexican and Canadian borders were open. In 1988, when Congress passed the Imported Vehicle Safety Compliance Act of 1988, the Canadian border was open. In 2001, when the Murray-Shelby provisions of the 2002 DOT Appropriations Act were enacted, the Canadian border was open.\14\ None of the legislative histories of any of these statutes indicate intent on the part of Congress to change the operating status of the Canadian motor carriers, even though there was no basis to believe the foreign-domiciled **commercial** motor **vehicles** were fully compliant with the requirements of all applicable FMVSSs.

\14\ In 1988 and 2001, the Mexican border was open to Mexican-domiciled carriers operating only in the border zones and to such carriers that had obtained authority to operate beyond the border zones before the imposition of the 1982 moratorium.

We have been unable to determine how many Mexican- and Canadian-domiciled motor carriers were operating in the trans-border trade when the Vehicle Safety Act was initially enacted, although the specific reference to these **vehicles** in the 1963 Tariff Schedule (28 FR 14663, December 31, 1963) indicates that at least some foreign-domiciled **commercial** motor **vehicles** were being used to transport cargo and passengers to and from the United States.

According to the statistics gathered by Transport Canada \15\ regarding international carrier activities in 1984, a total of 941 Canadian motor carriers

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were engaged in the U.S.-Canada cross-border trade at that time. These carriers owned or operated, in the aggregate, 72,441 **commercial** motor **vehicles**. Thus, when Congress amended the Vehicle Safety Act in 1988 to address specifically concerns it had with the **importation** of non-compliant motor **vehicles**, the United States and Canada enjoyed an active trade relationship in which shipping via **commercial** motor **vehicles** clearly played a major role. Yet the legislative history associated with the 1988 amendments never raises the prospect that Congress was concerned about whether the Canadian **commercial** motor **vehicles** posed a safety risk while operating in the United States. Certainly Congress would have been aware that at least some percentage

of goods imported to the United States from Canada were transported via truck, since President Reagan had lifted the Congressional moratorium on grants of new operating authority for Canadian carriers as recently as December 1982.

\15\ Statistics Canada, Trucking in Canada, 1984, Minister of Supply and Services Canada, 1986, table 2.7.

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3. FY 2002 DOT Appropriations Act

Finally, as noted by the comments on this rulemaking, by 2001, when the provisions of the 2002 DOT Appropriations Act governing Mexican motor carriers were enacted, the United States and Canada enjoyed the largest trading relationship in the world, with most of the cargo coming into the United States via **commercial** motor **vehicles** that were not certified as compliant with the FMVSSs. Indeed, the concern over compliance with all applicable FMVSSs was not raised during the debates and hearings on the safety of Mexican **commercial** motor **vehicles**. Rather, Congress' stated concern was with the level of maintenance of the Mexican **vehicles**.

Based on consideration of both the factors addressed by the previous documents interpreting the term ``import,'' as well as the other factors articulated above, we have determined that the agency's previous interpretation of the **importation** restriction on non-certified foreign-domiciled **commercial** motor **vehicles** may be overly encompassing and place unreasonable restrictions on foreign-based motor carriers. Unlike statutes related to the regulation and control of narcotics, the Vehicle Safety Act does not require, or even allow, NHTSA to eliminate entirely the possibility of motor vehicle crashes in this country. While the agency was directed to establish motor vehicle safety standards, those standards must be practicable (both technically and financially) and must meet the need for motor vehicle safety (49 U.S.C. 30111). Additionally, the Vehicle Safety Act does not directly regulate used **vehicles**. The authority rests with the states, subject to the Vehicle-in-Use Inspection Standards (49 CFR Part 570). Likewise, while the Vehicle Safety Act prohibits motor vehicle repair businesses from making required safety equipment inoperative (49 U.S.C. 30122), it does not prohibit individuals from modifying their own **vehicles** in whatever manner they choose.

Additionally, unlike the narcotics laws, possession of non-compliant motor **vehicles** has never been illegal. Indeed, section 108(b), as originally enacted, provides for several circumstances under which the sale, delivery, introduction, or **importation** of non-compliant **vehicles** are not prohibited. As noted above, there is no prohibition against the sale, offer for sale, or introduction or delivery of non-compliant used motor **vehicles**. The prohibition does not apply to **vehicles** that are imported into the U.S. pursuant to joint regulations issued by Customs and NHTSA. Finally, it does not apply to **vehicles** labeled for export. The 1988 amendments further expanded the number of exceptions to the general prohibition by adding an exemption for **vehicles** that are at least 25 years old.

The NPRM was proposed to provide context to the proposals for retroactive certification and record keeping. These proposals did not consider whether, as we have learned through the benefit of notice and comment rulemaking, alternative approaches can better serve the nation's safety needs. The FMCSA's program of enforcing its on-the-road operational standards, combined with the processes it is establishing to check that **vehicles** were originally built to then applicable U.S. standards, satisfies the stated Congressional concern over the

maintenance of Mexican trucks better than any program of retroactive labelling.

The NPRM proposing to add to the Code of Federal Regulations a definition of ``import'' relied heavily on the 1975 memo and added little analysis. We did not consider whether the overall regulatory scheme applicable to **commercial** motor **vehicles** would alter our conclusory statement about the purposes of the Vehicle Safety Act, nor whether it should affect our proclamation that such **vehicles** are equivalent to criminally illegal illicit drugs and contraband. The public comments we received have led us to review and consider more fully the underlying basis for the 1975 memo, and therefore the NPRM. Our more thorough and careful review leads us to conclude that the proposed definitional regulation does not adequately reflect the current regulatory environment and, in light of FMCSA's program to ensure operational safety, would provide no additional safety benefit. Accordingly, we have decided to withdraw the proposed definitional regulation.

We also believe it is important to note that while NHTSA issued its interpretation of the word ``import'' in 1975 in the context of addressing whether Canadian-domiciled **commercial** motor **vehicles** operating in the United States must meet the requirements of NHTSA's safety standard on air brake systems, as a practical matter NHTSA has never required **vehicles** with CMVSS labels to also carry FMVSS labels. Indeed, the comments indicate that the primary burdens associated with retroactive certification would fall on Canadian-domiciled **commercial** motor carriers, which have long been operating safely in the U.S. using **commercial vehicles** that were certified to the CMVSS and also met the FMCSRs.

In practice, NHTSA has generally sought to ensure that non-U.S.-domiciled **commercial** motor **vehicles** meet the same safety standards as U.S. **vehicles** (or very similar standards) by other means, especially working with FMCSA. We note, for example, that in responding to requests for interpretation in the late 1990's as to whether Canadian carriers can operate in the U.S. without the antilock brake systems required by NHTSA's safety standard, NHTSA's responses referred to the Federal motor carrier safety regulations rather than to our 1975 interpretation.\16\ Also, NHTSA and Transport Canada have a close working relationship.

\16\ See interpretation to Mr. Ted Reiniger, June 2, 1998; to Mr. Barrie Montague, June 1, 1998.

Thus, the approach discussed elsewhere in this document that the Department will be following for ensuring that **commercial vehicles** were built to the FMVSS (or the very similar CMVSS) and operate safely in the United States is consistent with our longstanding practices.

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Appendix

Table 1.--Comparison of CMVSS and FMVSS Requirements for Trucks and Buses over 4

Title	CMVSS	FMVSS
CMVSS No. 101, Controls and displays. FMVSS No. 101, Controls and displays.	--Requires the ISO brake failure symbol if a common brake	--Requires the word ``brake'' with mini height if a common

	malfunction indicator is used.	brake malfunction indicator is used.
CMVSS No. 102, Transmission control functions. FMVSS No. 102, Transmission shift lever sequence, starter interlock, and transmission braking effect..	No significant differences	
CMVSS No. 103, Windshield defrosting and defogging. FMVSS No. 103, Windshield defrosting and defogging systems..	No significant differences	
CMVSS No. 104, Windshield wiping and washing system. FMVSS No. 104, Windshield wiping and washing system..	No significant differences	
CMVSS No. 105, Hydraulic and electric brake systems. FMVSS No. 105, Hydraulic and electric brake systems..	--Requires statement to the same effect as U.S. for brake fluid reservoir labeling. --Requires the ISO ABS symbol for indicating ABS malfunction.	--Requires specific working for brake fluid reservoir labeling. --Requires the word ``ABS'', ``Anti-loc or ``Antilock'' wit minimum height for indicating ABS malfunction..
CMVSS No. 106, Brake hoses..... FMVSS No. 106, Brake hoses.....	No significant differences	
CMVSS No. 108, Lighting system and retro-reflective devices. FMVSS No. 108, Lamps, reflective devices, and associated equipment..	--Requires Daytime running lights. --Allows European headlamps..	Allows, but does not require daytime running lights.
CMVSS No. 111, Mirrors..... FMVSS No. 111, Rearview mirrors.....	No significant differences	
CMVSS No. 113, Hood latch system..... FMVSS No. 113, Hood latch system.....	No significant differences	
CMVSS No. 116, Hydraulic brake fluids FMVSS No. 116, Motor vehicle brake fluids..	No significant differences	
CMVSS No. 119, Tires for **vehicles** other than passenger cars. FMVSS No. 119, New pneumatic tires for **vehicles** other than passenger cars..	Requires maple leaf certification marking.	Requires DOT marking
CMVSS No. 120, Tire selection and rims for **vehicles** other than passenger cars. FMVSS No. 120, Tire selection and	No significant differences	

rims for motor **vehicles** other than passenger cars..		
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CMVSS No. 121, Air brake systems..... FMVSS No. 121, Air brake systems.....	Requires the ISO ABS symbol for indicating ABS malfunction.	Requires the letters ``ABS'' or ``Antilock'' with minimum height for indicating ABS malfunction.
CMVSS No. 124, Accelerator control systems. FMVSS No. 124, Accelerator control systems..	No significant differences	
CMVSS No. 131, School bus pedestrian safety devices. FMVSS No. 131, School bus pedestrian safety devices..	No significant differences	
CMVSS No. 203, Driver impact protection. FMVSS No. 203, Impact protection for the driver from the steering control system..	Requirement that clothing and jewelry cannot catch on steering wheel.	Requirement that clothing and jewelr cannot catch on steering wheel does not apply to **vehicl** of this class.
CMVSS No. 205, Glazing materials..... FMVSS no. 205, Glazing materials.....	References more recent version of ANSI Z26 test requirement, but allows older versions to be followed.	Only references olde versions of ANSI Z2
CMVSS No. 207, Anchorage of seats.... FMVSS No. 207, Seating systems.....	All seats must be tested as an assembly of seat and seat base when installed in vehicle.	Allows separate test of seating and seat base tested in a te fixture.
CMVSS No. 208, Occupant protection in frontal impact. FMVSS No. 208, Occupant crash protection..	All **vehicles** must have seat belt.	Allows for crash testing in lieu of seat belts in **vehic** over 4,536 kg.
CMVSS No. 209, Seat belt assemblies.. FMVSS No. 209, Seat belt assemblies..	--Includes a colorfastness test. --Requires label stating seat belt assembly must be installed in vehicle with an air bag if load limiters are used..	.....
CMVSS No. 210, Seat belt assembly anchorages.	Different requirements for seat belt	Provides an exemptio from seat belt

FMVSS No. 210, Seat belt assembly anchorages..	anchorage location for adjustable seats with seat travel greater than 70 mm than for seats with seat travel equal to or less than 70 mm.	anchorage installation, strength, and locat requirements if certified to unbelt barrier test in FMV No. 208.
CMVSS No. 217, Bus window retention, release and emergency exits. FMVSS No. 217, Bus emergency exits and window retention and release..	Requires push-out windows on all buses other than school buses.	Requires either push out windows or slid windows.
CMVSS No. 301.1--LPG Fuel system integrity.	.....	No FMVSS corollary..
CMVSS No. 301.2--CNG fuel system integrity. FMVSS No. 303, Fuel system integrity of compressed natural gas **vehicles**/ FMVSS No. 304, compressed natural gas fuel container integrity..	--Applies to all **vehicles**. --Fuel container must remain attached to vehicle at minimum of one attachment point.. --Adopts environmental testing requirements of CSA B51 or ANSI/AGA-NGV 2..	--Only regulated **vehicles** over 4,536 are school buses. --No environmental testing requirement
CMVSS No. 302, Flammability..... FMVSS No. 302, Flammability of interior materials..	No significant differences	

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Table 2.--Comparison of CMVSS and FMVSS Requirements for Trucks Trailer Over 4,

Title	CMVSS	FMVSS
CMVSS No. 108, Lighting system and retro-reflective devices. FMVSS No. 108, Lamps, reflective devices, and associated equipment..	--Requires pole trailers to have reflective markings. --Allows colors of reflective tape other than red and white markings (e.g., all white or all orange)..	Requires red and whi reflective tape.
CMVSS No. 119, Tire for **vehicles** other than passenger cars. FMVSS No. 119, Tire for **vehicles** other than passenger cars..	Requires maple leaf certification marking.	Requires DOT marking
CMVSS No. 120, Tire selection and rims for **vehicles** other than passenger cars. FMVSS No. 120, Tire selection and rims for motor **vehicles** other than passenger cars..	No significant differences.	

CMVSS No. 121, Air brake systems..... FMVSS No. 121, Air brake systems.....	No significant differences.	
FMVSS No. 223, Rear impact guards/ FMVSS No. 224, Rear impact protection.	No CMVSS corollary.....	Trailers must be equipped with rear impact guard having strength requiremen of 100kN and 5.65 k of energy absorptio on one side.

Issued on: August 22, 2005.
Stephen R. Kratzke,
Associate Administrator for Rulemaking.

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